

FEDERAL TRANSIT ADMINISTRATION

FINAL REPORT: PROCUREMENT SYSTEM REVIEW FOR THE *METROPOLITAN WASHINGTON AIRPORTS AUTHORITY* (MWAA)

SITE VISIT: *JANUARY 10-13, 2011*

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I. EXECUTIVE SUMMARY

Background

The Federal Transit Administration (FTA) contracted with Calyptus Consulting Group, Inc. (the 'reviewing contractor') to review the procurement system used by the Metropolitan Washington Airports Authority (MWAA) in the expenditure of grant funds.

The MWAA is considered to be one of FTA's major grantees due to the extent of grant funds related to the Dulles Metrorail Project and the sheer immensity of the project. The MWAA had not received a PSR previously from FTA since their FTA funding relates to a one-time project.

The procurement system review process, as indicated on the FTA's Web site, uses a standardized approach, interview guides, checklists, and reporting framework. This process was applied in its entirety without change in the review of MWAA.

Briefing and Opening Meeting

The reviewing contractor held a teleconference with the manager of oversight in the Region III office to understand the background for the Procurement System Review (PSR) and to review recent audit reports, past FTA reviews, and information on the current projects.

On January 10, 2011, an opening conference was held to explain the process to be used during the review. (See page 10 for a list of attendees.) Copies of policies and procedures, organization charts and a list of eligible contracts were received prior to the opening conference. Interviews with staff were conducted including the CEO, Project Director, Manager of Procurement, Rail Project Contracting Officer, Vice President of Audit, Vice President - Office of General Counsel, Equal Opportunity Programs Manager, Deputy Director of Finance and the Grants Administrator. The focus of interviews and discussions included the review of:

- Protest Procedures
- Policies and Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Organization and Personnel
- Status of Purchasing

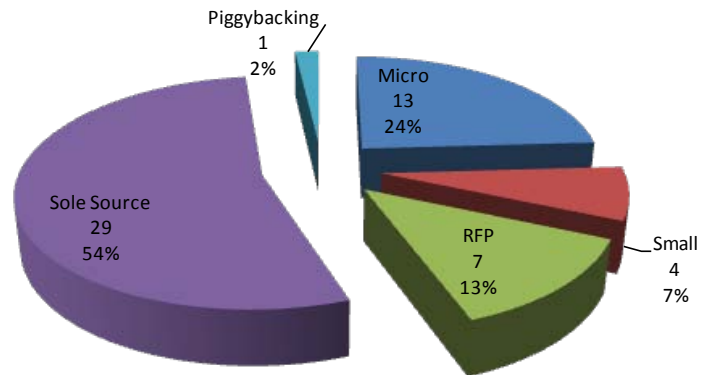
Procurements Reviewed

FTA-funded contracts having expenditures during the period of November 30, 2008 – November 30, 2010 related to the Dulles Project were reviewed to assess compliance with FTA Circular 4220.1F and the Master Agreement.

Fifty-four (54) procurements were identified as described in the following table and chart:

Procurement Breakdown by Method

| | | |
|--------------------|-----------|-------------|
| Micro | 13 | 24% |
| Small | 4 | 7% |
| IFB | 0 | 0% |
| Sole Source | 29 | 54% |
| Piggybacking | 1 | 2% |
| RFP | 7 | 13% |
| A&E | 1 | |
| Construction | 2 | |
| Total Files | 54 | 100% |



The two construction procurements were the two Design-Build contracts established in 2007 and 2008.

File Review and Closing Meeting

The file review was completed on January 13, 2011. The Exit Conference was held on January 13, 2011, to formally present the findings of the review to FTA Oversight staff and MWAA management.

Results of the Procurement System Review

The Metropolitan Washington Airports Authority demonstrated its compliance in a number of key areas required by the Master Agreement and FTA Circular 4220.1F. The grantee was rated not deficient in seventeen (17) of the elements. Fifteen (15) elements were not applicable or not observed due to lack of FTA-funded procurements relating to specific elements. The grantee was deficient in twenty-eight (28) of the elements. The reviewing contractor also made fifteen (15) suggestions to improve MWAA's procurement system.









The overall findings are summarized as follows:

| | |
|-----------------------------|----|
| Elements Not Deficient | 17 |
| Elements Deficient | 28 |
| Elements Not Applicable | 15 |
| Suggestions for Improvement | 15 |

Summary of PSR Findings by Element

The File Summary Report illustrates the findings by element, and the proposed corrective action timeframes (from the date of the final report):

| No. | Element | Basic Requirement 4220.1F | ND | D | NA | Corrective Action Timeframe |
|-----|--|---------------------------|----|----|----|-----------------------------|
| 1 | Written Standards of Conduct | III, 1.a.b.c. | 1 | 0 | | |
| 2 | Contract Administration System | III, 3. | 0 | 1 | | 90 Days |
| 3 | Written Protest Procedures | VII, 1. a. b. | 0 | 1 | | 30 Days |
| 4 | Pre-Qualification System | VI, 1.c. | 1 | 0 | 0 | |
| 5 | System for Ensuring Most Efficient & Economic Purchase | IV, 1. b. c. e. | 0 | 1 | | 90 Days |
| 6 | Procurement Policies & Procedures | III, 3.a. | 0 | 1 | | 90 Days |
| 7 | Independent Cost Estimates | VI, 6. | 14 | 26 | | 30 Days |
| 8 | A&E Geographic Preferences | VI, 2. a. (4) (g) | 1 | 0 | | |
| 9 | Unreasonable Qualification Requirements | VI, 2. a. (4) (a) | 11 | 0 | | |
| 10 | Unnecessary Experience and Excessive Bonding | VI, 2. a. (4) (b) (e) | 35 | 1 | 0 | 30 Days |
| 11 | Organizational Conflict of Interest | VI, 2. a. (4) (h) | 0 | 0 | 36 | |
| 12 | Arbitrary Action | VI, 2. a. (4) (i) | 36 | 3 | | 30 Days |
| 13 | Brand Name Restrictions | VI, 2. a. (3) | 1 | 0 | 10 | |
| 14 | Geographic Preferences | VI, 2. a. (4) | 35 | 0 | | |
| 15 | Contract Period of Performance Limitations | IV, 2.e.(10) | 0 | 2 | 38 | 30 Days |
| 16 | Written Procurement Selection Procedures | III, 3. a.; VI, 2. e. | 4 | 2 | | 30 Days |
| 17 | Solicitation Prequalification Criteria | VI, 1.c.(1)(2)(3) | 0 | 1 | 6 | 30 Days |
| 18 | Award to Responsible Contractors | VI, 8. b. | 3 | 32 | | 30 Days |
| 19 | Sound and Complete Agreement | III, 3. b.; III, 3.b. | 31 | 4 | | 30 Days |
| 20 | No Splitting [Micro-purchases] | VI, 3. a. | 13 | 0 | 0 | |
| 21 | Fair and Reasonable Price Determination | VI, 3. a. | 1 | 12 | 0 | 30 Days |
| 22 | Micro-Purchase Davis Bacon | VI, 3. a. | 0 | 0 | 13 | |
| 23 | Price Quotations [Small Purchases] | VI, 3. b. | 4 | 0 | | |
| 24 | Complete Specifications | VI, 2. a.; VI, 3. c. | 35 | 5 | | 30 Days |
| 25 | Adequate Competition - Two or Responsible Bidders | VI, 3. c. (b) | 6 | 0 | | |
| 26 | Firm Fixed Price [Sealed Bid] | VI, 3. c. (1) (c) | 0 | 0 | | |
| 27 | Selection on Price [Sealed Bid] | VI, 3. c. (1) (d) | 0 | 0 | | |
| 28 | Discussion Unnecessary [Sealed Bid] | VI, 3. c. (1) (e) | 0 | 0 | | |
| 29 | Advertise/Publicized | VI, 3. c. (2) (a) | 6 | 0 | | |
| 30 | Adequate Solicitation | VI, 3. c. (2) (b) | 6 | 0 | | |
| 31 | Sufficient Bid Time [Sealed Bid] | VI, 3.c.(2)(d) | 0 | 0 | | |
| 32 | Bid Opening [Sealed Bid] | VI, 3.c.(2)(e) | 0 | 0 | | |
| 33 | Responsiveness [Sealed Bid] | VI, 3.c.(2)(f) | 0 | 0 | | |
| 34 | Lowest Bid [Sealed Bid] | VI, 3.c.(2)(f) | 0 | 0 | 0 | |
| 35 | Rejecting Bids [Sealed Bid] | VI, 3.c.(2)(g) | 0 | 0 | 0 | |
| 36 | Evaluation [RFP] | 3. d. (2) (d) | 5 | 2 | | 30 Days |
| 37 | Price and Other Factors [RFP] | 3. d. (2) (e) | 6 | 0 | | |
| 38 | Sole Source if Other Award is Infeasible | VI, 3. h. | 13 | 16 | | 30 Days |
| 39 | Cost Analysis Required [Sole Source] | VI, 6. a. | 1 | 28 | | 30 Days |

| No. | Element | Basic Requirement 4220.1F | ND | D | NA | Corrective Action Timeframe |
|-----|--|------------------------------|----|----|---|--------------------------------|
| 40 | Evaluation of Options | VI, 7. b. | 4 | 4 | 27 | 30 Days |
| 41 | Cost or Price Analysis | VI, 6. | 6 | 4 |  | 30 Days |
| 42 | Written Record of Procurement History | III, 3. d | 13 | 27 |  | 30 Days |
| 43 | Exercise of Options | V, 7. a. (1) (a) (b) | 0 | 3 | 32 | 30 Days |
| 44 | Out of Scope Changes | VI, 3. h. (3) (c) | 0 | 10 | 25 | 30 Days |
| 45 | Advance Payments | IV, 2. b. (4) (b) 1, 2 | 33 | 2 |  | 30 Days |
| 46 | Progress Payments | IV, 2.b.(5)(c) | 2 | 0 | 33 | |
| 47 | Time and Materials Contracts | VI, 2.c.(2)(b) | 1 | 1 | 33 | 30 Days |
| 48 | Cost Plus Percentage of Cost | VI, 2.c.(2)(a) | 33 | 2 |  | 30 Days |
| 49 | Liquidated Damages Provisions | IV, 2.b.(6)(b) 1) | 2 | 0 | 33 | |
| 50 | Piggybacking | V, 7. a. (2) | 0 | 1 |  | 30 Days |
| 51 | Qualifications Exclude Price [A&E] | VI, 3.f.(3) | 1 | 0 |  | |
| 52 | Serial Price Negotiations [A&E] | VI, 3.f.(3) | 0 | 1 |  | 30 Days |
| 53 | Bid Security [Construction over \$100,000] | IV, 2.h.(1)(a)] | 0 | 0 | 2 | |
| 54 | Performance Security [Const. over \$100,000] | IV, 2.h.(1)(b) | 2 | 0 | 0 | |
| 55 | Payment Security [Construction over \$100,000] | IV, 2.h.(1)(c) | 2 | 0 | 0 | |
| 56 | Clauses | IV, 2. | 4 | 35 |  | 30 Days |
| 57 | Pre-Award Review - Rail | 49 C.F.R. 663 | 0 | 0 | 0 | |
| 58 | Post-Award Review - Rail | 49 C.F.R. 663 | 0 | 0 | 0 | |
| 59 | Pre-Award Review - Bus | 49 C.F.R. 663 | 0 | 0 | 0 | |
| 60 | Post-Award Review - Bus | 49 C.F.R. 663 | 0 | 0 | 0 | |

ND=Not Deficient
D=Deficient
NA=Not Applicable/Observed

The balance of this report is comprised of the description of the grantee, the methodology used, the findings of the review and the corrective action required. The reviewing contractor will work with MWAA and FTA to close findings. MWAA must report the status of its efforts on FTA corrective actions at least quarterly until those elements of the procurement system are brought back into compliance.

II. DESCRIPTION OF THE GRANTEE

History of the Grantee

The Metropolitan Washington Airports Authority (MWAA) grew out of the Metropolitan Washington Airports Act of 1986, which provided for the transfer of Washington Dulles International Airport and Ronald Reagan Washington National Airport from the Federal Aviation Administration to the Authority under a 50-year lease. The Federal government remains as the leaseholder.

The MWAA is responsible for operation of, and capital improvements to, the two airports. It uses aircraft landing fees, rents and concessions revenues to fund its operating expenses. It also issues bonds to cover its Dulles Development Program, a capital construction program to improve facilities and increase capacity at that airport.

The FTA grant for the Dulles Corridor Metrorail Project marks the first use of federal funds for a transit construction project by the Authority.

History of the Dulles Metrorail Project

The MWAA is currently engaged in a design-build project to extend the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system 23.1 miles to connect the Dulles Corridor in Northern, VA with the greater Washington, DC area, enabling travel to Dulles International Airport via public transit. MWAA is working in partnership with the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, Fairfax County, and Loudoun County to design and build the new rail line. Upon completion, it will be transferred to WMATA for administration.

The project originated outside of MWAA with a Comprehensive Agreement dated June 11, 2004 between the Virginia Department of Rail and Public Transportation and Dulles Transit Partners. On March 24, 2006, a Memorandum of Understanding was signed that transferred control of the project to MWAA by assigning the Comprehensive Agreement to the Authority and providing control over other formerly state-run entities such as the Dulles Toll Road for use in funding the rail expansion project.

The final Assignment and Assumption Agreement with the Virginia Department of Rail and Public Transportation was established in June 2007. The first design-build contract was negotiated at that time but the contract did not go into effect as the MWAA was awaiting the FFGA from FTA. During the course of the next 11 months, interim agreements were established as part of the Comprehensive Agreement to keep the design-build contractor in place and continuing with ROW acquisitions and Utility relocations. In May 2008, MWAA received notice from the FTA approving the advance of the initial phase of the project into final design. Once this funding was secured, the Authority entered into a Design-Build contract with Dulles Metrorail Partners in July 2008.

The Dulles Metrorail Project is a two-phase effort. Phase I will extend WMATA service 11.7 miles to reach Reston, VA. Phase II will extend the line from Reston through Dulles International Airport and into Loudoun County. FTA is funding Phase I of the project with \$900

million in Section 5309 New Starts and \$75 million in Surface Transportation Funds. The estimated total Phase I Project cost is \$3.142 billion.

Procurement System

Due to the unique nature of the Dulles Metrorail project, related procurements are typically handled separately from those managed for non-transit products and services. However, no separate set of Policies and Procedures exist to govern FTA-funded procurements.

The policies and procedures for MWAA are summarized below. The approval level for each of these individuals/groups is noted by threshold in the following table:

| <i>Threshold</i> | <i>Contract Type</i> |
|-------------------------|--|
| <\$2,500 | Micro purchase (PCard) |
| \$2,501 - \$10,000 | Small Purchase (requires 3 quotes) |
| \$10,001 - \$25,000 | Small Purchase (requires RFQ issued to 5 vendors) |
| \$25,001 - \$200,000 | Competitive (may not use RFQ) |
| \$200,000 - \$3 million | Competitive (may use RFQ) |
| All >\$3 million | Competitive (requires Board approval) |
| All <\$200,000 | Contract modifications |
| All >\$200,000 | Contract modifications (with Board approval) |
| All <\$200,000 | Sole Source Procurements |
| All >\$200,000 | Sole Source Procurements (with Board approval, unless Categorical Exception) |

Board approval is required for all contracts over \$3 million and for all exceptions to full and open competition requirements over \$200,000, unless they contain a “Categorical Exception.” MWAA exempts a number of categories of goods and services from the requirement to obtain full and open competition. These goods and services are:

- Legal
- Financial
- Audit
- Legislative Representation
- Airport security
- Utilities
- Government Purchasing Agreements
- Airline Tenant Procured Projects
- Proprietary Equipment / Software

Disadvantaged Business Enterprise (DBE) Program

For non-FTA funded contracts, the MWAA operates a Local Disadvantaged Business Enterprise (LDBE) set-aside program. The Authority may establish voluntary goals for minority-owned and women-owned businesses and conduct outreach to achieve these goals under this program. These goals are wholly voluntary, however, and are not a binding requirement for contractors.

When the Dulles Metrorail Project began, a new DBE program was developed to cover all FTA-funded contracts under the project. The MWAA followed a formal goal development process, including public comment, when submitting the original project goal, which is currently set at 13.24%. When a new requirement is developed, the scope and cost structure are sent to the Manager for Small Business Opportunities and an analysis is conducted to determine the DBE participation level appropriate for the work envisioned. Each of the four primary contracts for the rail project has a separate goal and these goals sum to 13.24%.

All DBE reporting under the Dulles Metrorail Project is completed using the same forms as those for the LDBE program. Each month contractors are required to submit a document listing all of their subcontractors, what the commitment is for each subcontractor, and what each subcontractor has been paid to date. The MWAA has retained a contractor to monitor the DBE program and provide oversight.

Internal Audit

MWAA's internal auditors are responsible for reviewing and reporting on transactions completed by the various Departments of the Authority. Audits pertaining to the Dulles Metrorail Project have so far only covered rail project funding and cash flow projections, indirect cost reviews, and a compliance abstract. For 2011, the auditors have planned eight (8) audits in connection with this project. These are audits of:

1. Cash Draws
2. Construction Site Inspections
3. Contract Allowance Adjustments
4. Contract Change Orders
5. Davis-Bacon Wage Requirements
6. Design-Build Contract Invoices
7. Earned Value Analysis
8. Program Management Support Services Contract

III. SCOPE AND METHODOLOGY

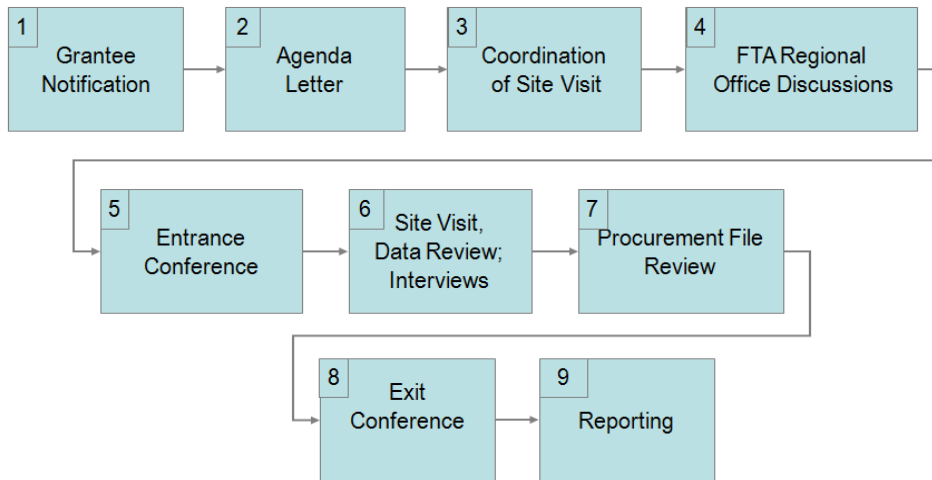
This was the first FTA Procurement System Review (PSR) performed at the Metropolitan Washington Airports Authority. The organization traditionally receives funding for its airport projects from revenue and bond sales. The new multi-billion dollar Dulles Corridor Metrorail Project, which was transferred from the State of Virginia to the Authority in 2007, is MWAA's first FTA-funded project. The project is funded under a Full Funding Grant Agreement (FFGA) awarded in March 2009. This PSR was designed to evaluate the level of MWAA's compliance with FTA procurement requirements during the project's first two years and to offer guidance for compliance with FTA requirements in the future.

The following representatives of FTA, MWAA, and Calyptus Consulting attended the Entrance Conference held on January 10, 2011.

| <i>Name</i> | <i>Organization</i> | <i>Title or Department</i> | <i>Telephone Number</i> |
|--------------------|---|----------------------------|-------------------------|
| Brian A. Glenn | Director, DC Metro Office | FTA | 202-219-3562 |
| Lynn Hampton | President and CEO | MWAA | 703-417-8610 |
| Patrick Nowakowski | Executive Director | MWAA | 703-572-0501 |
| Phil Sunderland | General Counsel | MWAA | 703-417-8615 |
| Johnna Spera | Associate General Counsel | MWAA | 703-417-8611 |
| Valerie Holt | Vice President, Audit | MWAA | 703-417-8776 |
| Jane Kee | Audit Manager | MWAA | 703-417-8777 |
| Steven Baker | Vice President, Business Administration | MWAA | 703-417-3001 |
| Sam Carnaggio | Project Director | MWAA | 703-572-0502 |
| Luz Coflesi-Howe | Deputy Director, Project Finance | MWAA | 703-572-0507 |
| E. Fred Seitz | Manager Procurement | MWAA | 703-417-8674 |
| Eric Carey | Contracts Manager | MWAA | 703-572-0514 |
| Cynthia Lipcomb | EOP Account Manager | MWAA | 703-417-8429 |
| Richard Gordon | EOP Manager | MWAA | 703-417-8360 |
| Felicia Payne | Admin. Officer | MWAA | 703-417-8776 |
| Joseph Licaros | Grants Administrator | MWAA | 703-417-8785 |
| George Harris | President | Calyptus | 617-577-0041 |
| Julie Robinowitz | Consultant | Calyptus | 617-577-0041 |
| Allison Gianneschi | Analyst | Calyptus | 617-577-0041 |

The purpose of the entrance conference was to provide information on the sequence of activities for the review, as noted in the following flowchart:

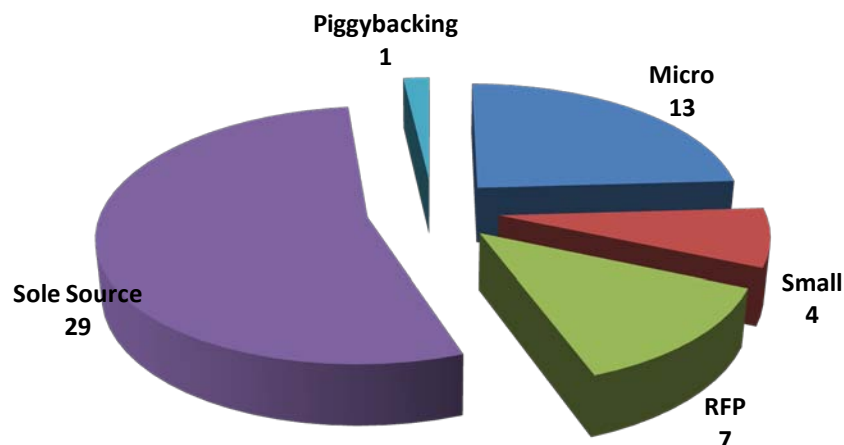
FTA Procurement System Review Process



Using the questionnaires from the FTA's PSR guide, individual interviews were conducted with executive management, finance, administration, legal, and procurement staff. In addition, information such as organization charts and policies and procedures were collected. The interviews and documentation were used to establish the framework for the file review.

Based on the data received and the assessment of the grantee's written policies and procedures, the reviewing contractor provided a list of procurements to be reviewed.

The reviewing contractors reviewed fifty-four (54) procurements. The breakdown by procurement method is as follows:



At the conclusion of the procurement system review, the grantee was briefed on the results and was offered the opportunity to submit any documents for review that might clarify or eliminate areas marked deficient within the following 2 to 4 weeks before the draft final report was released. An exit conference was held on January 13, 2011 to brief MWAA and FTA on the results of the procurement system review.

The following individuals attended the exit conference:

| <i>Name</i> | <i>Organization</i> | <i>Title or Department</i> | <i>Telephone Number</i> |
|--------------------|---|----------------------------|-------------------------|
| Brian A. Glenn | Director, DC Metro Office | FTA | 202-219-3562 |
| Lynn Hampton | President and CEO | MWAA | 703-417-8610 |
| Margaret McKaye | COO | MWAA | 703-417-8610 |
| Andrew Rountree | CFO | MWAA | 703-417-8710 |
| Patrick Nowakowski | Executive Director | MWAA | 703-572-0501 |
| Phil Sunderland | General Counsel | MWAA | 703-417-8615 |
| Johnna Spera | Associate General Counsel | MWAA | 703-417-8611 |
| Valerie Holt | Vice President, Audit | MWAA | 703-417-8776 |
| Jane Kee | Audit Manager | MWAA | 703-417-8777 |
| Edythe Poole | Audit | MWAA | 703-417-8778 |
| Steven Baker | Vice President, Business Administration | MWAA | 703-417-3001 |
| Sam Carnaggio | Project Director | MWAA | 703-572-0502 |
| Luz Coflesi-Howe | Deputy Director, Project Finance | MWAA | 703-572-0507 |
| E. Fred Seitz | Manager Procurement | MWAA | 703-417-8674 |
| Eric Carey | Contracts Manager | MWAA | 703-572-0514 |
| Cynthia Lipcomb | EOP Account Manager | MWAA | 703-417-8429 |
| Richard Gordon | EOP Manager | MWAA | 703-417-8360 |
| Felicia Payne | Admin. Officer | MWAA | 703-417-8776 |
| Erica Easter | Board of Directors Office | MWAA | 703-417-8955 |
| Joseph Licaros | Grants Administrator | MWAA | 703-417-8785 |
| George Harris | President | Calypsus | 617-577-0041 |
| Julie Robinowitz | Consultant | Calypsus | 617-577-0041 |
| Allison Gianneschi | Analyst | Calypsus | 617-577-0041 |

The overall findings are summarized as follows:

| | |
|------------------------------|----|
| Elements Not Deficient: | 17 |
| Elements Deficient: | 28 |
| Elements Not Applicable: | 15 |
| Suggestions for Improvement: | 15 |

The requirements and the detailed information comprising these findings make up the balance of the report. The following sections will cover areas not deficient with FTA and Federal Requirements, findings of deficiency with FTA and Federal Requirements, and suggestions for improving MWAA's procurement system.

The MWAA submitted a response to the draft final report on March 24, 2011. Specific corrective actions are noted in the appropriate sections of the report. The complete response is attached as Appendix M to this report.

IV. AREAS NOT DEFICIENT WITH FTA AND FEDERAL REQUIREMENTS

1. Written Standards of Conduct

Basic Requirement: Chapter III, Section 1 a. b. c. of FTA Circular 4220.1F requires that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The section also addresses potential conflicts, solicitation and acceptance of gifts, penalties and sanctions.

Discussion: MWAA's Ethics Policy contains adequate provisions for gratuities, code of ethics and conflicts of interest, and authority contact with contractors and vendors.

4. Pre-Qualification System

Basic Requirement: Chapter VI, Section 1.c. of FTA Circular 4220.1F states that grantees may prequalify people, firms, or products for participation in procurements, provided that:

- Lists used in acquiring property and services are current;
- Lists include enough qualified sources to ensure maximum full and open competition;
- The recipient permits potential bidders or proposer to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.

Discussion: MWAA's Administrative Procedures provide for a system of pre-qualification that meets FTA requirements.

8. A & E Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA Circular 4220.1F states that geographic location may be a selection criterion for A&E services if "an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project."

Discussion: The one (1) procurement reviewed for this requirement was found to be not deficient.

9. Unreasonable Qualification Requirements

Basic Requirement: Chapter VI, Section 2.a (4) (a) of FTA Circular 4220.1F indicates that unreasonable requirements placed on firms in order for them to qualify to do business are considered to be restrictive of competition.

Discussion: Of the eleven (11) procurements reviewed for this requirement, none were found to be deficient.

13. Brand Name Restrictions

Basic Requirement: Chapter VI, Section 2.a (3)(4)(f) of FTA Circular 4220.1F indicates that specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its’ salient characteristics is considered to be restrictive of competition. This requirement’s basic purpose is to maximize competition by allowing competitors to satisfy grantee requirements using their creativity and own products. The use of brand names clearly restricts competition. When using “brand names or equal”, grantees must indicate how equivalents will be determined and by whom.

Discussion: The one (1) procurement reviewed for this requirement was found to be not deficient.

14. Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA Circular 4220.1F requires that grantees conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Discussion: Of the thirty-five (35) procurements reviewed for this requirement, none were found to be deficient.

20. No Splitting [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a. (2) (b) of FTA Circular 4220.1F indicates that micro-purchases are those purchases under \$3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of the thirteen (13) procurements reviewed for this requirement, none were found to be deficient.

23. Price Quotations [Small Purchases]

Basic Requirement: Chapter VI, Section 3.b. (2) of FTA Circular 4220.1F defines small purchase procedures as those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$3,000, but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). It also indicates that price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

25. Adequate Competition- Two or More Competitors

Basic Requirement: Chapter VI, Section 3.i (1)2.a. of FTA Circular 4220.1F indicates that adequate competition exist when two or more responsible bidders are willing and able to compete effectively for the business.

Discussion: Of the six (6) procurements reviewed for this requirement, none were found to be deficient.

29. Advertised/Publicized

Basic Requirement: Section 9.c (2) (a) of FTA Circular 4220.1F requires grantees to publicly advertise invitations to bid and provide offerors “sufficient time to prepare bids prior to the date set for opening.” In addition, Section 9(d)(1) of the Circular requires grantees to “publicize” all Requests for Proposals (RFP).

Chapter VI, Section 3.c. (2) (a) of FTA Circular 4220.1F requires that the invitation for bids be publicly advertised and that bids be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Of the six (6) procurements reviewed for this requirement, none were found to be deficient.

30. Adequate Number of Sources Solicited

Basic Requirement: Chapter VI, Section 3.c (2) (b) of FTA Circular 4220.1F requires that:

- Proposals are solicited from an adequate number of qualified sources.
- Requests for proposals are publicized.

Discussion: Of the six (6) procurements reviewed for this requirement, none were found to be deficient.

37. Price and Other Factors [RFP]

Basic Requirement: Section 9.d of FTA Circular 4220.1F, requires under Section 9.d (4) that in determining awards using the RFP method, “price and other factors be considered.” Other factors could include those other terms and conditions that were required in the request for proposal solicitation such as the specification, labor rates, labor hours and delivery schedule.

Chapter VI, Section 3.d. (2) (e) of FTA Circular 4220.1F indicates that:

- Awards made to firm whose proposal is most advantageous to the grantee's program with price and other factors considered
- Grantees may award to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value.” “Best value” language must be in the solicitation.

Discussion: Of the six (6) procurements reviewed for this requirement, none were found to be deficient.

46. Progress Payments

Basic Requirement: Chapter IV, Section 2.b. (5) (c) of FTA Circular 4220.1F indicates that progress payments are allowed if:

- (1) They are only made to the contractor for costs incurred in the performance of the contract.
- (2) Adequate security is obtained (such as taking title, letter of credit or equivalent means)

Discussion: Two (2) construction procurements were reviewed for this requirement. Neither was found to be deficient.

49. Liquidated Damages Provisions

Basic Requirement: Chapter IV, Section 2.b (6) (b) 1 of FTA Circular 4220.1F indicates that grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. In addition, the assessment for damages shall be at a specific rate per day for each day of the overrun in contract time. The rate must be pre-determined and specified in the third party contract.

Discussion: Two (2) construction procurements were reviewed for this requirement. Neither was found to be deficient.

51. Qualifications Exclude Price [A & E]

Basic Requirement: Chapter VI, Section 3.f. (3) (b) of FTA Circular 4220.1F indicates that A&E procurements must comply with the Brooks Act, which requires that qualifications-based competitive proposal procedures be followed for this type of procurements.

Specifically, it mandates that:

- (1) An offeror's qualifications are evaluated;
- (2) Price be excluded as an evaluation factor.

Discussion: The one (1) A&E procurement reviewed for this requirement was found to be not deficient.

54. Performance Bond [Construction over \$100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (b) of FTA Circular 4220.1F requires that the Performance Security:

- Is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Amount is equal to 100 percent of the contract price.

Discussion: Two (2) construction procurements were reviewed for this requirement. Neither were found to be deficient.

55. Payment Bond [Construction over \$100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (c) of FTA Circular 4220.1F requires that the Payment Security:

- Assures payment of all persons supplying labor and material
- Includes required amounts as follows:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million

Discussion: Two (2) construction procurements were reviewed for this requirement. Neither were found to be deficient.

V. FINDINGS OF DEFICIENCY IN FTA AND FEDERAL REQUIREMENTS

Regarding elements numbers 7 -56 of the review, a detailed list of all contracts with findings of deficiency is noted in Appendix A.

2. Contract Administration System

Basic Requirement: Chapter III, Section 3 of FTA Circular 4220.1F requires that grantees maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Discussion: Although MWAA's *Contracting Manual* provides guidance on contract administration procedures, this guidance was judged to be insufficient based on the observation of the actual contract administration processes taking place at the Agency. Three of the largest contracts – the Design-Build contract, the Comprehensive Agreement Supplement (CA Supplement), and the A&E contract – did not have contract values or periods of performance. Unit prices were not included in the CA Supplement. In addition, the design-build contractor was authorized to incur costs beyond the end date established in a number of task orders issued under the supplement, including one task order for over \$40,000,000.

Without these controls in the contract, there is no effective contract administration system. It is the practice of MWAA for non-transit procurements to have an open period of performance and contract value.

Out-of-scope modifications were found in construction, professional services, A&E, and other type contracts reflecting changes to contract amounts, duration, and unit prices outside the original intent of the contracts.

Best Practices: Timely execution of a definitive contract and up-to-date revisions to the contract are important to ensure control over contractor performance. Prompt and accurate documentation of contract changes is vital to equitable settlement and close-out of the contract. The FTA recommends that contract administration files routinely contain the following documentation:

- Executed contract and notice of award
- Basis of award
- Cost and price analysis
- Board of Director approvals
- History of the procurement
- Approvals or disapprovals of waivers and deviations
- Modifications and changes, including rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases

Implementing a central contract administration and management function will ensure improved management of contractor performance.

Corrective Action: MWAA should establish contract values and performance periods, as well as unit prices, for all contracts within thirty (30) days from the date of the final report. The MWAA Board of Directors should approve contract values. Task orders under the Comprehensive Agreement Supplement should be revised to prohibit the incurrence of costs beyond the end dates of open orders. Revise procedures in accordance with FTA Circular 4220.1F to emphasize that contract modifications are to be of a limited number and dollar value and should not be a result of poor planning or an inadequate initial scope of work. Training should also be provided to procurement staff to ensure the effective implementation of this change. All of these activities should be completed and verified by an independent audit within ninety (90) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will modify these three contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. Contract approvals will be presented to the Board of Directors in accordance with the established delegation of Authority.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 90 days from the date of the final report.

3. Written Protest Procedures

Basic Requirement: Chapter VII, Section 1.a.b. of FTA Circular 4220.1F requires that grantees have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Discussion: This requirement was found to be deficient because MWAA's Written Protest Procedures did not specify the need to notify FTA of any protests received on procurement involving FTA funds.

Best Practices: Policies are written to provide internal staff with guidelines on the time-frames for response and the need to notify FTA of every protest. Procedures are written to include:

- Submittal requirements from potential contractors
- Internal review cycle
- When decisions are final
- How FTA will be notified

Internal policies and procedures are written in addition to publishing protest guidelines to potential contractors in solicitations.

Corrective Action: MWAA should revise its policies and procedures in accordance with FTA Circular 4220.1F. Training on the revised policies and procedures should be provided to procurement staff to ensure their effective implementation. These activities should be completed and verified by an independent audit within ninety (90) days from the date of the final report.

MWAA's Response: Contracting Officers will notify the FTA if there is a protest on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and an independent audit to validate of compliance must be provided to FTA within 90 days from the date of the final report.

5. System for Ensuring Most Efficient and Economic Purchase

Basic Requirement: Chapter IV, Section 1.b.c.e. of FTA Circular 4220.1F requires that grantee procedures provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual contracts. In addition, lease versus buy analyses are required for applicable purchases to ensure the most economical approach.

Discussion: This requirement was found to be deficient due to a number of practices in place at MWAA that inhibit efficient and economic purchasing. The sole source method of award was used disproportionately and unnecessarily, limiting competition on a number of large dollar value contracts for legal and financial services. Furthermore, in three (3) contracts – the Comprehensive Agreement Supplement, the Jacobs/Carter-Burgess A&E contract for project management services, and the WMATA Cooperative Agreement – no contract amount was established, allowing for open-ended contracts with those contractors.

Best Practices: FTA's *Best Practices Procurement Manual* states that procurement plans covering several years may be an effective way to facilitate the most cost-effective purchasing management practices. The plans can identify major changes in procurement workload, and can obviate any tendency to rush procurement decisions or activities in ways that result in waste (e.g., through failure to consolidate major procurements) or risk non-compliance (e.g., through inadequate notice and non-competitive awards).

Typically, the purchase of supplies will be evaluated annually based on the grantee's foreseeable needs and such factors as economic quantity breaks, warehousing space, shelf life, technology concerns, etc. Upon analysis of annual purchase patterns and quantities, the grantee may perceive that there is an opportunity to increase competition or improve pricing through consolidated purchasing, on-call contracts, piggybacking, or other contracting scenarios. In any event, all contracts should have not-to-exceed amounts or fixed price contract values and defined periods of performance.

Corrective Action: MWAA should amend the three (3) contracts noted above, revise the associated policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance through an independent audit within ninety (90) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will modify these three contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures in the form of an independent audit must be provided to FTA within 90 days from the date of the final report.

6. Procurement Policies and Procedures

Basic Requirement: Chapter III, Section 3.a of FTA Circular 4220.1F requires that grantees and subgrantees use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in FTA Circular 4220.1F.

Discussion: This requirement was found to be deficient due to the absence or inadequacy of several areas mandated by FTA requirements. The most critical deficiency was the section on sole source awards, which instructed that sole source awards could be made to certain services deemed to be "categorical exceptions." When procuring legal or financial services, or when contracting with utility companies, no competition is required. These "categorical exceptions" are not recognized by FTA and should be removed from the list of sole source justifications. See the discussion of Element 38 in this section for a list of the acceptable criteria for sole source award.

Additionally, the following procedures were not included in the grantee's manual:

- Maintaining a written record of procurement
- Contract term limitations for rolling stock (affects WMATA agreement)
- Prohibition of tag-ons
- Prohibition of unreasonable requirements in order to qualify to do business
- Organizational Conflict of Interest
- Prohibition of arbitrary action
- Prohibition of geographic preference
- Documentation of the reason(s) for bid rejection
- Utilization of Brooks Act in Design-Build procurements
- Requirement for cost analysis on sole source procurements
- Market price comparison when exercising options
- Cost principles (FAR 31 reference for cost-type contracts)

- Bonding – requirement for a 5% bid guarantee
- Prohibition of advance payments without FTA concurrence
- Liquidated damages provisions
- Federal statutory and regulatory requirements

Best Practices: The Grantee’s policies and procedures guide users and contracting/purchasing staff in the proper execution of material and service acquisitions. A review of FTA Circular 4220.1F will indicate the areas required to ensure compliance with Federal Regulations.

Corrective Action: MWAA should revise their policies and procedures in accordance to FTA Circular 4220.1F to ensure compliance with FTA requirements for the Dulles Corridor Rail Project and conduct procurement staff training within ninety (90) days from the date of the final report. Compliance with the revised procedures should be confirmed by an independent audit.

MWAA’s Response: Contracting Officers and COTRs will eliminate the use of the "Categorical Exception" on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor’s Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 90 days from the date of the final report.

7. Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of FTA Circular 4220.1F requires that “... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals.”

Discussion: Of the forty (40) procurements reviewed for this requirement, fourteen (14) were found to be not deficient and twenty-six (26) were found to be deficient.

Best Practices: Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Best Practices for obtaining independent cost estimates include:

- Estimates are received from design firm or in-house technical personnel for construction work,
- Published price lists or past pricing with inflation factors are analyzed, and
- Independent third-party staff member (not impacted by final procurement) develops these estimates.

A template for developing Independent Cost Estimates is provided in Appendix C.

Corrective Action: MWAA must revise its policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: All Federally funded Rail project procurements will be reviewed by the Contracting Officers and COTRs to ensure an Independent Cost Estimate (ICE) is in the procurement file. COTRs will be given the sample ICE form provided by the FTA Auditors as guidance. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

10. Unnecessary Experience and Excessive Bonding

Basic Requirement: Chapter VI, Section 2.a (4) (e) of FTA Circular 4220.1F and BPPM 8.2 state that unnecessary experience and excessive bonding requirements are considered to be restrictive of competition.

Discussion: Thirty-six (36) procurements were reviewed for this requirement. Thirty-five (35) were found to be not deficient and one (1) was found to be deficient. In a contract for special inspections services, a 100% performance bond was required. For a professional services contract, this is excessive and could restrict competition.

Best Practices: FTA's *Best Practices Procurement Manual* advises grantees "not to include any unnecessary requirements and keep the solicitation as simple as possible. Large or complex solicitation packages discourage some potential offerors." When concerned that a "lowest bid" process will not yield sufficient quality or creativity, grantees may utilize the RFP process or perform a two-stage procurement in which firms' qualifications are vetted prior to a request for pricing.

Corrective Action: MWAA must revise its policies and procedures to address the specific bonding requirements according to the type of contract as stated in FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will eliminate the use of the Unnecessary Experience and Excessive Bond on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

12. Arbitrary Action

Basic Requirement: Chapter VI, Section 2.a (4)(j) of FTA Circular 4220.1F indicates that any arbitrary action in the procurement process is considered to be restrictive of competition. Proper file documentation can help evaluate whether or not an arbitrary action occurred.

Discussion: Of the thirty-nine (39) procurements reviewed for this requirement, thirty-six (36) were found to be not deficient and three (3) were found to be deficient. In the CTI contract for special inspection services, three different evaluation methods were listed in the solicitation; cost and other factors, the use of minimally acceptable evaluation criteria, and lowest price technically acceptable. It was difficult to determine which method was ultimately used. In a contract for program management services, there was no contract value making it difficult to determine how the award was made. Further, it was unclear as to the type of contract used (Time and Materials or Cost plus Fixed Fee). In a contract for insurance and risk management services, a new contract was created and treated as if it were an extension to two existing contracts.

Best Practices: Consistency in the procurement process is the best method of obtaining compliance for arbitrary action. In addition, concerns regarding arbitrary action can be eliminated with proper file documentation, such as bid opening records, bid comparison sheets, award decision documentation and negotiation memoranda. The grantee should ensure that the procurement process includes documentation that accurately portrays what occurred and that approvals are made to evidence proper decision-making.

Corrective Action: MWAA should terminate and re-compete the contract for insurance and risk management services. MWAA must revise its policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: The Authority insurance brokerage contract is currently being re-solicited. The new insurance program will be in effect in August 2011.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

15. Contract Term Limitation

Basic Requirement: Chapter IV, Section 2.e (10) of FTA Circular 4220.1F requires that grantees do not enter into any contract for rolling stock and replacement parts with a period of performance exceeding five (5) years, inclusive of options. In addition, contracts exceeding a five (5) year duration should be based on sound business reasoning.

Discussion: Of the two (2) procurements reviewed for this requirement, both were found to be deficient. In both the WMATA Cooperative Agreement and in the Comprehensive Agreement Supplement, no contract period of performance was included.

Best Practices: Grantees are authorized to procure rolling stock or other supplies and services by a number of methods, including buying on an annual or on an as-needed basis, and also on a multi-year basis. FTA requirements should be incorporated into the procurement process to provide for the need to monitor contracts having the potential for more than a five-year period of performance and to ensure that all procurements have closed-ended periods of performance. Grantees should also provide training in this area so that all involved in the purchasing process will be aware of this requirement. Grantees should establish a practice of regularly reviewing contracts for expiration (bid calendars serve as excellent tools for this purpose) and ensure that adequate time exists for re-procurement processes to comply with this requirement.

Corrective Action: MWAA must establish accurate contract terms in the WMATA Cooperative Agreement and the Comprehensive Agreement Supplement, make changes to its policies and procedures, conduct training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will modify these two contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in the new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

16. Written Procurement Selection Procedures

Basic Requirement: Chapter III, Section 3.a of FTA Circular 4220.1F requires that grantees have written selection procedures for procurement transactions. This ensures that procurements are awarded in a fair and equitable manner.

Discussion: Of the six (6) procurements reviewed for this requirement, four (4) were considered to be not deficient and two (2) were considered to be deficient. In a contract for special inspections, the RFP stated that selection would be made on the basis of Lowest Price Technically Acceptable, but in practice, not all technically acceptable bidders were considered, and it is unclear how the actual evaluation was conducted. In a contract for a real estate lease, no key evaluation criteria were documented in the quotation documents to give potential bidders a chance to respond to areas of interest to the MWAA.

Best Practices: The grantee should establish written selection procedures in every solicitation. Once proposals are received, evaluators should follow these criteria when considering the proposals submitted and document the evaluators' findings. Documentation for all procurements should be maintained in a central location regardless of award amount. The

request for quotation for any small purchase should contain language identifying the basis for award (such as lowest priced responsive offer) and a copy of it should be included in the file.

Corrective Action: MWAA must revise its policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers will ensure that written evaluation procedures are provided in each Rail Project procurement award file.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by independent audit must be provided to FTA within 30 days from the date of the final report.

17. Solicitation Pre-Qualification Criteria

Basic Requirement: Chapter VI, Section 1.c (1)(2)(3) of FTA Circular 4220.1F requires that lists of prequalified persons, firms, or products that are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum full and open competition. Furthermore, the process cannot preclude potential bidders from qualifying during the solicitation period.

Discussion: The one (1) contract reviewed for this requirement was found to be deficient. The contract for special inspections was awarded without correctly adhering to pre-qualification procedures. The solicitation stated that the solicitations would only be sent to existing Virginia Department of General Services contract holders. There was no provision provided to allow bidders to qualify during the solicitation period. It was unclear how other offerors were able to submit proposals under this procurement.

Best Practices: The grantee should ensure that its pre-qualification process allows for bidders to pre-qualify during the solicitation period and that award is not dependent on whether or not the bidder holds an existing contract with MWAA or another associated body.

Corrective Action: MWAA must revise policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers will ensure that solicitation prequalification criteria are appropriate for all Rail Project procurements.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

18. Award to Responsible Contractors

Basic Requirement: Chapter VI, Section 8.b of FTA Circular 4220.1F requires that grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility may be affected by new information up to the time of contract award. Responsibility determination factors include whether the prospective contractor has:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
- The capability to comply with the required delivery schedule considering all their existing business commitments;
- A satisfactory record of performance;
- A satisfactory record of integrity;
- Legal qualification to contract with grantee; and supplied all necessary information in connection with the inquiry concerning responsibility.

Discussion: Of the thirty-five (35) procurements reviewed for this requirement, three (3) were found to be not deficient and thirty-two (32) were found to be deficient. The three procurements that were found to be not deficient were all non-transit; these procurements included all the missing documentation, including the check of the Excluded Parties List System (EPLS). Rail procurements universally lacked the EPLS check and did not follow established policies and procedures.

Best Practices: There are many proven methods to determine whether or not a supplier is responsible, including:

- Visiting the supplier's facility;
- Examining prior work performed by the supplier;
- Checking financial and client references;
- Evaluating prior performance reports; and reviewing the Federal debarred/suspended contractor listing.

A sample contractor responsibility determination form is provided as Appendix D in this report. MWAA should include a form of this type in each contract file to demonstrate compliance.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Written responsibility determination will be included in each rail project award file. All procurements will be checked with EPLS and findings documented.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

19. Sound and Complete Agreement

Basic Requirement: Chapter III, Section 3.b of FTA Circular 4220.1F requires that all contracts include provisions to define a sound and complete agreement. These provisions include administrative, contractual, and legal remedies and the ability to terminate the contract for cause and convenience.

Discussion: Of the thirty-five (35) contracts reviewed for this requirement, thirty-one (31) were found to be not deficient and four (4) were found to be deficient. The Comprehensive Agreement Supplement does not have a contract value associated with it, nor does it have a period of performance. The Jacobs/Carter-Burgess A&E contract for project management also has no contract value or period of performance. The WMATA Cooperative Agreement does not have a contract value associated with it. A contract for ASCE training was completed with a purchase card despite being over the micro-purchase threshold, thus having no terms and conditions.

Best Practices: All procurements above the micro-purchase threshold should be definitized by a written contract approved by appropriate legal and procurement personnel. The grantee may use checklists to remind involved personnel of the contract clauses required by the FTA in the Circular and the Master Agreement.

Corrective Action: MWAA must amend the Comprehensive Agreement Supplement, WMATA Cooperative Agreement, and the Jacobs/Carter-Burgess A& E contract for project management services so that either contract terms or contract financial values are reflected in the agreements (whichever is applicable), revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will modify these contracts to be in compliance by analyzing each contract and including a contract value and period of performance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

21. Fair and Reasonable Price Determination [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a (2)(c) of FTA Circular 4220.1F indicates the following guidelines for micro-purchases:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of the thirteen (13) micro-purchase files reviewed for this requirement, one (1) was found to be not deficient and twelve (12) were found to be deficient. The deficiencies arose from the fact that micro-purchases are generally made via the PCard, and the PCard process has no step that requires the documentation on the part of the user that the price being paid for an item is fair and reasonable.

Best Practices: FTA's *Best Practices Procurement Manual* suggests that grantees prepare some "boilerplate" determinations for signature that allows one to fill in the blanks, sign, and file it. Such a form might contain language that states that the price is fair and reasonable based on the buyer's knowledge of these or equivalent commercial items sold in the open marketplace.

The requirement may be satisfied by having the PCard user complete a form for each purchase attesting that the price is fair and reasonable. A sample price reasonableness form is provided as Appendix E.

Corrective Action: MWAA must revise its policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Authority Office of Finance will revise the PCard Manual to require this documentation.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

24. Clear, Accurate and Complete Specifications

Basic Requirement: Chapter III, Section 3.a.(1)(a)(b)(d) of FTA Circular 4220.1F requires that grantees have a clear and accurate description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge on grantee's requirements.

Discussion: Of the forty (40) procurements reviewed for this requirement, thirty-five (35) were found to be not deficient and five (5) were found to be deficient. These deficiencies occurred where there was either no written statement of specifications or work developed, or

where the work described was so general that it allowed for a significant number of change orders because the original scope of services was ill-defined, such as the contracts for legal services (2 procurements), financial advisory services, and tax consulting services. Additionally, the Comprehensive Agreement Supplement did not include overall Statements of Work for Utility Relocation Services and Right of Way acquisitions.

Best Practices: FTA's *Best Practices Procurement Manual* suggests that the specifications describe the grantees needs "as completely, clearly, accurately, and unambiguously as possible" in order to prevent the shipment of inadequate goods, and to prevent claims arising from errors. The grantee must ensure that specifications are clearly written and reviewed by enough people to ensure completeness and to insist that all orders and contracts contain clear specifications.

Corrective Action: MWAA must amend the Comprehensive Agreement Supplement and contracts for legal services, financial services, and tax consulting services; revise its policies and procedures in accordance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRS will modify the five contracts noted to ensure there is detailed Statement of Work. In addition, Contracting Officers and COTRs will review all Federally funded Rail project procurements to ensure a detailed Statement of Work is included. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

36. Evaluation [RFP]

Basic Requirement: Chapter VI, Section 3.d (2)(b) of FTA Circular 4220.1F requires that:

- All evaluation factors are identified along with their relative importance;
- Grantees have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

Discussion: Of the six (6) procurements reviewed for this requirement, four (4) were found to be not deficient and two (2) were found to be deficient. In a contract for special inspection services, the RFP criteria were not listed in priority order that corresponded to the order of priority given in the evaluation of those criteria. In the contract for the rail office lease, there was no documentation that a technical evaluation was performed based on the bona fide criteria.

Best Practices: The chosen method of solicitation must take into account factors other than price alone. Price must always be a factor in establishing the competitive range, unless the work envisioned is an Architectural and/or Engineering type of services. For construction type procurements where design must occur during the performance period, either a design-build or a two-step procurement method should be used. The intention to use a specific method of procurement must be stated in all solicitation documents in order to provide clear expectations from potential contractors.

Corrective Action: MWAA must provide training and guidance to procurement staff on the process to be followed when developing evaluation criteria, and the requirements on how to reflect the evaluation criteria in solicitations. Evidence of this corrective action must be provided within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officer will provided documentation to the office lease file to demonstrate a technical evaluation was performed. A cost analysis will be provided as well. In addition, Contracting Officers will ensure that technical evaluations are followed in Federally funded Rail Project procurements and solicitations.

Reviewing Contractor's Response: MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

38. Sole Source If Other Award Is Inadequate

Basic Requirement: Chapter VI, Section 3.i. (1) (b) of FTA Circular 4220.1F allows for procurements by non-competitive proposal only when the contract award is inadequate under other procurement methods and at least one of the conditions outlined below exists:

1. Item or service is only available from a single source;
2. Public exigency or emergency for the requirement will permit a delay from competitive bidding;
3. FTA authorizes non-competitive negotiations; or
4. Competition is deemed inadequate.

Title 49 U.S.C., Paragraph 5307(a)(1) defines such a capital maintenance item as one that is procured directly from the original manufacturer or supplier of the item to be replaced and the grantee first certified in writing to the FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, thirteen (13) were found to be not deficient and sixteen (16) were found to be deficient. The

overwhelming majority of these deficiencies arose from the use of MWAA's "categorical exception" for legal services, financial services, and utilities as a basis for sole source justification. These exceptions do not comply with FTA requirements.

Best Practices: The grantee should ensure that in sole source situations, the proper review of competition is performed prior to the approval of waivers. Each requirement subjected to review should assess whether or not a brand name or specified source is truly the only possible option for the grantee. Documentation must be thorough and specific, outlining the detailed reasoning for the sole source action. See Appendix F for an example of a Non-Competitive Procurement Justification.

Corrective Action: MWAA must modify its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and submit follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. Any contracts not meeting these standards must be terminated and re-competed.

MWAA's Response: Contracting Officers and COTRs will provide sufficient justification for Sole Source procurements and will eliminate the use of "categorical exceptions" in any Federally funded Rail project procurement. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

39. Cost Analysis Required [Sole Source]

Basic Requirement: Chapter VI, Section 6.a of FTA Circular 4220.1F confirms that a cost analysis must be obtained when the offeror submits elements (labor hours, overhead, materials, etc.), when the price competition is inadequate, when there is only a sole source available, or when an order is changed. The recipient is not obligated to obtain a cost analysis where price reasonableness of the proposed contracts can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation have established price.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, one (1) was found to be not deficient and twenty-eight (28) were found to be deficient. A cost analysis including a detailed profit analysis was not performed. MWAA has a document that describes cost analysis but this document is not included in the MWAA procedures manual.

Best Practices: The grantee may consider the following Best Practices in cost analysis:

- Verification of cost or pricing data and evaluation of cost elements
- Evaluation of effect of offeror's current practices on future costs
- Comparison of costs proposed with actual or previous cost estimates

- Verification of offeror's costs with Federal cost principles

A sample cost analysis template is provided as Appendix G in this report.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: All Federally funded Rail project procurements will be reviewed by the Contracting Officers and COTRs to ensure a Cost Analysis is in the procurement file. COTRs will be given the sample Cost Analysis form provided by the FTA Auditors as guidance. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: The MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

40. Evaluation of Options

Basic Requirement: Chapter VI, Section 7.b of FTA Circular 4220.1F requires that the option quantities or periods contained in the contractor's bid or offer be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion: Of the eight (8) procurements reviewed for this requirement, four (4) were found to be not deficient and four (4) were found to be deficient.

Best Practices: Option years should be evaluated separately from the base year when making contract awards. Options exercised that were not evaluated at the time of contract award should be treated as sole source procurements.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: The Contracting Officer will evaluate all unawarded contract options, based on COTR analysis, prior to acceptance and will re-solicit the procurement if the analysis concludes that a different business approach would benefit the Authority. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

41. Cost or Price Analysis

Basic Requirement: Chapter VI, Section 6.a.b.c. of FTA Circular 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Of the ten (10) procurements reviewed for this requirement, six (6) were found to be not deficient and four (4) were found to be deficient.

Best Practices: The grantee must ensure that all contract specialists understand the elements of price analysis, and that files reflect the use of such analysis to show a logical determination of price reasonableness. Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
- Previous contracts
- Catalog or market prices
- Historical prices and trending
- Independent cost estimates

One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services.

The grantee should conduct a more thorough analysis of price variances on bids, examining variances from the independent estimate as well as the differences between bids recorded.

A sample price analysis template is provided as Appendix H in this report.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: All Federally funded Rail project procurements will be reviewed by the Contracting Officers and COTRs to ensure a Cost Analysis is in the award file. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

42. Written Record of Procurement History

Basic Requirement: Chapter III, Section 3.d (1) of FTA Circular 4220.1F requires that grantees maintain records detailing the history of each procurement. The basis for contract price requirement applies to all procurements except micro-purchases. At a minimum, the following must be included in the record:

For procurements above the small purchase threshold:

- The rationale for the method of procurement
- Selection of contract type

For all procurements above the micro-purchase threshold:

- Reasons for contractor selection or rejection
- Basis for contract price

Discussion: Of the forty (40) procurements reviewed for this requirement, thirteen (13) were found to be not deficient and twenty-seven (27) were found to be deficient. The basis for contract price was often missing; this omission is likely due to the widespread lack of cost and price analyses performed in connection with the procurements, the addition of budget amounts to contracts, and the lack of procurement planning on procurements above the small purchase threshold.

Best Practices: FTA's *Best Practices Procurement Manual* states "a properly documented procurement file provides an audit trail from the initiation of the requirement to the beginning of the contract." In addition, a well-documented file can be interpreted on its own, without any assistance or additional information.

MWAA should initiate a method of central tracking of their procurement activity. A policy describing the need for important file documentation to be captured in purchasing files should be established. Training should be provided to all personnel involved in the procurement process to ensure that proper procedures are being followed. In addition, the use of checklists would facilitate this process. The *Best Practices Procurement Manual* recommends the following procurement file documentation where appropriate:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- State of work/scope of services
- Copies of published notices of proposed contract action

- Copy of the solicitation, all addenda and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data
- Required internal approvals for award
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Record of any protest
- Bid, Performance, Payment or other bond documents and notices to sureties
- Required insurance documents, if any, and
- Notice to proceed

Appendix I provides a checklist that could be used to document the rationale for method of procurement, selection of contract type, reasons for contractor selection or rejection, and the basis for contract price. Implementation of a procurement method form is an appropriate response to this finding. Appendix J also provides checklists that may be placed in each file to ensure that all proper documentation has been included.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training on proper file documentation and submit the results of a follow-up audit within thirty (30) days from the date of the final report.

MWAA's Response: All Federally funded Rail project procurements will be reviewed by the COs and COTRs to ensure a Written Record of Procurement History is in the procurement file. The Written Record of Procurement History may be included in the Pre-Negotiation Memo. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: The MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

43. Exercise of Options

Basic Requirement: Chapter V, Section 7.a (1) (a)(b)(c) 2 of FTA Circular 4220.1F requires that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded, and that an option may not be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

Discussion: Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. There were two main reasons for these finding of deficiency. First, options were not evaluated at the time they were exercised in order to ensure that they were still cost effective under the current market conditions. Second, options that were not evaluated at the time of contract award were not treated as sole source procurements when ultimately exercised. No cost analysis was performed and no justification was provided.

Best Practices: When options are used, separate negotiations of the price of each option period is performed. This allows the agency to better understand pricing levels for each year of performance, rather than use average prices over a longer period. Options priced on a yearly basis also allows for the assessment of the price of the option against market prices prior to a decision to exercising the right. Options must be included in the contract in order to be exercised.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training on proper file documentation and submit the results of a follow-up audit within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will evaluate the cost effectiveness of any Federally funded Rail project contract before exercising any options. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

44. Out of Scope Changes

Basic Requirement: Chapter VI, Section 3.i. (1)(b) of FTA Circular 4220.1F indicates that a contract change that is not within the scope of the original contract is considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: Of the ten (10) procurements reviewed for this requirement, all ten (10) were found to be deficient. In cases where out of scope changes were made, these changes were not treated as sole source procurements. There was no evaluation of whether the work should be re-bid. Additional funding was added to contracts without any apparent analysis. In the case of the Comprehensive Agreement Supplement, no unit prices were established in the Agreement, making most changes for utility relocation out of scope. In a legal services contract, the contract

value rose from \$75,000 to \$600,000 without consideration for competition or re-pricing. This deficiency was especially prevalent in contracts for services that fell under the MWAA's "categorical exceptions."

Best Practices: FTA considers a change order that is not within the scope of the original contract to be a cardinal change or a sole source procurement. Significant case law exists to support the definition(s) of out of scope changes. If the modification is so substantive that it changes the complexion of the deal, it is out of scope. If the modification might have been fairly and reasonably within the contemplation of the parties at the time the contract was signed it may be in scope. Questions to be asked to warn of out of scope changes are:

- Is the end item or service substantially changed (by an individual modification or as a cumulative effect of several modifications)?
- How does the change price compare to the contract price? Is it substantial?
- What resources are required to accomplish the new work? A different set of resources signals an out of scope change.
- Would the competitive factors be different if the change were proposed as part of the original contract?
- Would different firms have bid?

Appendix K provides a sample checklist that may be used to evaluate whether a change should be considered in- or out-of-scope.

Corrective Action: MWAA must revise its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training on proper file documentation, and submit the results of a follow-up audit within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will eliminate Out of Scope changes in any Federally funded Rail project contract. Contracting Officers and COTRs will eliminate the use of Categorical Exceptions on any Federally funded rail project procurement. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

45. Advance Payments

Basic Requirement: Chapter IV, Section 2.b (5)(b) of FTA Circular 4220.1F indicates that FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Discussion: Of the thirty-five (35) procurements reviewed for this requirement, thirty-three (33) were found to be not deficient and two (2) were found to be deficient. In the

Intergovernmental Agreement with WMATA for technical advisory services and rail vehicles, advance payments are made on a quarterly basis without FTA approval. In a small purchase procurement of picture frames, an advance payment was also required and FTA concurrence was not obtained.

Best Practices: The Grantee should ensure that all documentation is located in the contract file. This documentation should show whether advance payments were made and the FTA authorization for those advance payments.

Corrective Action: MWAA must respond with detailed procedures, training, oversight and follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. If the Authority desires to continue using advance payments, these payments must cease until FTA approval is received.

MWAA's Response: The Contracting Officers and COTRs will identify any past advanced payments to contractors and will obtain written approval from the FTA. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: The MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

47. Time and Materials (T&M) Contracts

Basic Requirement: Chapter VI, Section 2.c (2)(b) of FTA Circular 4220.1F indicates that Time and Materials Contracts should be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Discussion: Of the two (2) procurements reviewed for this requirement, one (1) was found to be not deficient and one (1) was found to be deficient. In the contract for professional schedule analysis services, no discussion of why T&M was the most appropriate contract vehicle was provided.

Best Practices: The requirement for detailing the method of procurement and contract type in the procurement file must be indicated. Time and materials contracts must only be utilized after all other contract types have been considered. If a time and materials contract is determined to be the most suitable contract type, a maximum ceiling price must be stated in the contract to meet the Federal requirement.

Corrective Action: MWAA must respond with detailed procedures, training, oversight and follow-up audit results evidencing compliance within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will provide documentation of analysis of the need to use Time and Materials for any Federally funded Rail project procurement. Time and Materials contracts will be minimized and used only when no other option is available. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: Copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

48. Cost plus Percentage of Cost

Basic Requirement: Chapter VI, Section 2.c (2)(a) of FTA Circular 4220.1F indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. This method awards the contractor's profit as a percentage of the cost of the work, which could have a negative effect on cost containment.

Discussion: Of the thirty-five (35) procurements reviewed for this requirement, thirty-three (33) were found to be not deficient and two (2) were found to be deficient. In the Comprehensive Agreement Supplement, the design-build contractor is provided on the basis of a fee for all tasks associated with utility relocation. No fixed fee has been established. In a contract for program management services, no fixed fee was established and the contractor receives an additional fee for every hour charged. This incentivizes the expenditure of costs and labor to receive an open-ended amount of fee.

Best Practices: The cost-plus-a-percentage-of-cost type of contract is banned in Federal Acquisition and cannot be used by Grantees.

Corrective Action: MWAA should complete an analysis of each scope change in the Comprehensive Agreement Supplement and the Jacobs/Carter-Burgess program management service contract, reflect why each change was within scope, describe why the change was an additive change, indicate how the fixed fee should have been adjusted, and define the current and planned value of the entire effort broken out by total estimated costs and fixed fee. This information should be provided to FTA within thirty (30) from the date of the final report. MWAA also must revise the Comprehensive Agreement Supplement and the program management services contract to establish overall contract values to include total estimated costs and fixed fee amounts. The process to establish final overhead rates for the Comprehensive Agreement Supplement must be completed as part of this corrective action and within ninety (90) days of the end of the each calendar year. MWAA must modify its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and submit

follow-up audit results evidencing compliance within thirty (30) days from the date of the final report.

MWAA's Response: Contracting Officers and COTRs will modify these two contracts to be in compliance by establishing fixed fees. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. Future rail procurements will include no Cost plus Percentage of Cost pricing.

Reviewing Contractor's Response: MWAA should complete an analysis of each scope change in the Comprehensive Agreement Supplement and the Jacobs/Carter-Burgess program management service contract, reflect why each change was within scope, describe why the change was an additive change, indicate how the fixed fee should have been adjusted, and define the current and planned value of the entire effort broken out by total estimated costs and fixed fee. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

50. Piggybacking

Basic Requirement: Chapter V, Section 7.a(2) of FTA Circular 4220.1F defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services. Grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements.

Discussion: One (1) procurement was reviewed for this requirement and found to be deficient. In the purchase of SUV vehicles from a state contract, FTA clauses were omitted from the agreement.

Best Practices: Agencies may assign contractual rights to purchase goods and services to other entities if the original contract contains appropriate assignability provisions. Grantees are encouraged to utilize available state and local intergovernmental agreements for acquiring common goods and services. Grantees should perform a market analysis to ensure that the price is fair and reasonable.

Corrective Action: MWAA must respond with documentation relating to the pre-award and post-award requirements of Buy America for this procurement, revise procedures, conduct training, implement oversight and furnish follow-up audit results evidencing compliance within thirty (30) days from the date of the final report.

MWAA's Response: The Contracting Officer will provide the award file required documentation for the SUV purchase. The Authority includes all federal requirements in any procurement made from an intergovernmental contract. This issue will be addressed will in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: The MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

52. Serial Price Negotiations [A&E]

Basic Requirement: Chapter VI, Section 3.f (3)(d) of FTA Circular 4220.1F indicates that:

- Negotiations be conducted with only the most qualified offeror
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

Discussion: One (1) procurement was reviewed for this requirement. It was found to be deficient. In a contract for program management services, no documentation of serial price negotiations was provided.

Best Practices: The use of serial negotiations to determine the contract price after the preferred technical choices have been made addresses the cost issue as secondary to the quality issues. The grantee must be careful to specify a realistic level of qualifications required to perform the work and then evaluate against those needs to avoid technical selection of over-qualified firms whose pricing may be difficult to adjust to the grantee's budget. Both procurement and technical staff must be knowledgeable in A&E procurement requirements.

Corrective Action: MWAA must modify its policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and submit follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. In addition, a summary of how labor rates and contract values were established must be provided.

MWAA's Response: Documentation of Pricing for the rail program management support services will be provided in the award file.

Reviewing Contractor's Response: MWAA should not recreate any information to be included in the file documentation. All corrective action to correct the deficiency on this element should be prospective in nature. MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

56. Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of FTA Circular 4220.1F indicate that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the thirty-nine (39) procurements reviewed for this requirement, four (4) were found to be not deficient and thirty-five (35) were found to be deficient. In general, MWAA is using purchase order terms and conditions without adding the necessary FTA clauses when contracting with FTA funds. The design-build contracts, the Comprehensive Agreement Supplement, and a utility relocation contract were the only contracts that included the required clauses.

Best Practices: FTA's *Best Practices Procurement Manual* discusses which Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts but to purchase orders as well. See Appendix L, Contract Clauses from FTA Circular 4220.1F for an example of a contract clause listing. Purchase order forms that include these requirements should be put in place. Including all required clauses in every file would simplify contract preparation for all federally funded items. Current procedures do not list all the specific flow-down requirements and should be updated to do so, whether in an appendix or in the body of the procedure. Grantees should also provide training to all personnel who are involved in the procurement process (including sub-contractors) to ensure they are familiar with the requirements of the FTA Circular 4220.1F and Master Agreement.

Corrective Action: MWAA must revise policies and procedures in conformance with FTA Circular 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report.

MWAA's Response: The Contracting Officers will modify all Federally funded Rail project contracts to incorporate the federal clauses. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.

Reviewing Contractor's Response: MWAA must provide copies of all revised contract and task order amendments to FTA. In addition, copies of revised procedures, evidence of training, and validation of compliance to new procedures by an independent audit must be provided to FTA within 30 days from the date of the final report.

VI. SUGGESTIONS FOR IMPROVING THE PROCUREMENT SYSTEM

The suggestions for improving the system are provided by the reviewing contractor to highlight practices that were observed during the PSR that, if not changed, could result in future deficiencies. These suggestions do not address FTA requirements, but point to under-performing or non-existent elements of the grantee's procurement system.

- 1) Follow the MWAA procurement process, with the addition of FTA requirements. The competitive procurements reviewed that were conducted by MWAA non-transit staff met most FTA requirements.
- 2) Greatly reduce the number of sole source awards.
- 3) Ensure that required documentation is included in the contract files per the published checklists.
- 4) Ensure that all task orders have meaningful end dates and that expenditures are not made after the established dates.
- 5) Eliminate categorical exceptions for FTA contracts.
- 6) Contracting Officer should not continue to approve invoices.
- 7) Instill price analysis thinking on all contracts and modifications.
- 8) Establish unit prices for all task order contracts.
- 9) Define the extent to which the dollar value of existing contracts can be extended.
- 10) Base Contract values on data provided in supplier proposals developed from MWAA Statements of Work.
- 11) The Board of Directors shall not award contracts outside the procurement system.
- 12) MWAA management shall not make amendments to contracts without procurement and project management input.
- 13) Lower Board of Director approval thresholds for base contracts and change orders.
- 14) Include documentation of all quotes received for small purchases in the procurement file per MWAA procedures.

VII. APPENDIX ITEMS

Appendix A: Detail of Deficient Contracts

Appendix B: Organizational Charts

Appendix C: Independent Cost Estimate

Appendix D: Responsibility Determination Form

Appendix E: Fair and Reasonable Price Determination

Appendix F: Non-Competitive Procurement Justification

Appendix G: Cost Analysis Form

Appendix H: Price Analysis

Appendix I: Procurement Summary Example

Appendix J: Contract File Checklists

Appendix K: Change Order Review Checklist

Appendix L: Contract Clauses

Appendix M: Copy of MWAA Response to Draft Final Report dated March 24, 2011

Appendix A: Detail of Deficient Contracts

| No. | Element | Deficient Contracts | | |
|-----|--|----------------------|-----------------|---|
| | | Type of Solicitation | Contract Number | Contract Description |
| 2 | Contract Administration System | System-Wide Element | | |
| 3 | Written Protest Procedures | System-Wide Element | | |
| 5 | System for Ensuring Most Efficient & Economic Purchase | System-Wide Element | | |
| 6 | Procurement Policies & Procedures | System-Wide Element | | |
| 7 | Independent Cost Estimates | Small Purchase | 3-10-0020 | Carwash Coupon Books |
| | | Small Purchase | 2-10-B130 | Coffee Services |
| | | Small Purchase | 2-09-B196 | Coffee Services |
| | | RFP | 8-07-C003 | Rail Office Lease |
| | | RFP | 8-07-C001 | Program Management |
| | | RFP | 8-09-B019 | Temp Accounting and Audit Personnel |
| | | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 8-07-C004 | Restated DB Contract |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-08-B034 | Utility Relocation |
| | | Sole Source | 8-08-B021 | Before and After Study |
| | | Sole Source | 8-08-B007 | Utility Relocation |
| | | Sole Source | 8-08-B016 | Utility Relocation |
| | | Sole Source | 8-09-B016 | Community Outreach |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-08-B042 | Documentation of Planning Forecasts |
| | | Sole Source | 8-07-B011 | Gas Line Relocation |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 8-07-C007 | CA Supplement |
| | | Sole Source | 10-030-208 | Training |
| 10 | Unnecessary Experience and Excessive Bond | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |

| No. | Element | Deficient Contracts | | |
|-----|--|----------------------|-----------------|--|
| | | Type of Solicitation | Contract Number | Contract Description |
| 12 | Arbitrary Action | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C001 | Program Management |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| 15 | Contract Period of Performance Limitations | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-07-C007 | CA Supplement |
| 16 | Written Procurement Selection Procedures | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C003 | Rail Office Lease |
| 17 | Solicitation Prequalification Criteria | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| 18 | Award to Responsible Contractors | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C003 | Rail Office Lease |
| | | RFP | 8-07-B009 | Local and Long Distance Services |
| | | RFP | 8-07-C001 | Program Management |
| | | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 8-07-C004 | Restated DB Contract |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-08-B037 | Utility Relocation |
| | | Sole Source | 8-08-B046 | Permitting and Design Review Services |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-07-B017 | Liaison Services |
| | | Sole Source | 8-08-B034 | Utility Relocation |
| | | Sole Source | 8-08-B021 | Before and After Study |
| | | Sole Source | 8-08-B007 | Utility Relocation |
| | | Sole Source | 8-08-B016 | Utility Relocation |
| | | Sole Source | 8-08-B003 | Utility Relocation |
| | | Sole Source | 8-09-B016 | Community Outreach |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |

| No. | Element | Deficient Contracts | | |
|-----|---|----------------------|-----------------|---|
| | | Type of Solicitation | Contract Number | Contract Description |
| 18 | Award to Responsible Contractors | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-08-B042 | Documentation of Planning Forecasts |
| | | Sole Source | 8-07-B011 | Gas Line Relocation |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 8-07-C007 | CA Supplement |
| | | Sole Source | 10-030-208 | Training |
| 19 | Sound and Complete Agreement | RFP | 8-07-C001 | Program Management |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-07-C007 | CA Supplement |
| | | Sole Source | 10-030-208 | Training |
| 21 | Fair and Reasonable Price Determination | Micro Purchase | IAD25978 | Bracket, Light Mounting Side #91007 |
| | | Micro Purchase | IAD29528 | Bracket, Utility Light |
| | | Micro Purchase | DCA80409 | Catering |
| | | Micro Purchase | DCA83212 | Reston Festival Registration Fee |
| | | Micro Purchase | DCA79518 | Management Concepts |
| | | Micro Purchase | IAD29110 | Repair Body |
| | | Micro Purchase | IAD29601 | Fire Extinguisher |
| | | Micro Purchase | IAD27547 | Oil Filter #1372 |
| | | Micro Purchase | IAD27610 | Oil Filter #1522 |
| | | Micro Purchase | IAD31604 | Mat Floor |
| | | Micro Purchase | IAD29342 | Tire |
| | | Micro Purchase | IAD26986 | Light Bar |
| 24 | Complete Specifications | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-C007 | CA Supplement |
| 36 | Evaluation [RFP] | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C003 | Rail Office Lease |

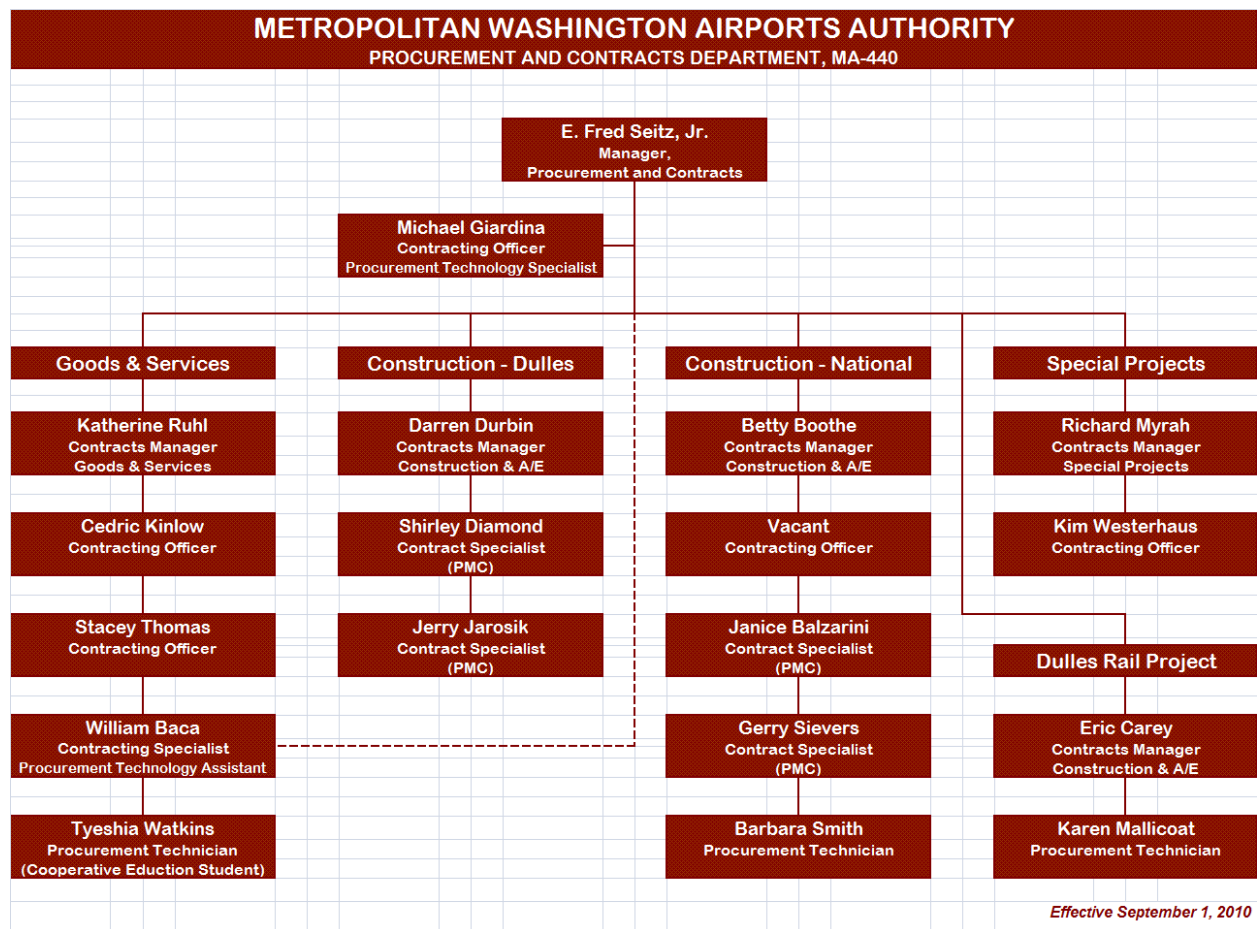
| No. | Element | Deficient Contracts | | |
|-----|--|----------------------|-----------------|--|
| | | Type of Solicitation | Contract Number | Contract Description |
| 38 | Sole Source if Other Award is Infeasible | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-07-B017 | Liaison Services |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| | | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 10-030-208 | Training |
| 39 | Cost Analysis Required [Sole Source] | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 8-07-C004 | Restated DB Contract |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-08-B037 | Utility Relocation |
| | | Sole Source | 8-08-B046 | Permitting and Design Review Services |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-07-B017 | Liaison Services |
| | | Sole Source | 8-08-B034 | Utility Relocation |
| | | Sole Source | 8-08-B021 | Before and After Study |
| | | Sole Source | 8-08-B007 | Utility Relocation |
| | | Sole Source | 8-08-B016 | Utility Relocation |
| | | Sole Source | 8-08-B003 | Utility Relocation |
| | | Sole Source | 8-09-B016 | Community Outreach |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |

| No. | Element | Deficient Contracts | | |
|-----|---------------------------------------|----------------------|-----------------|--|
| | | Type of Solicitation | Contract Number | Contract Description |
| 39 | Cost Analysis Required [Sole Source] | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| | | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-08-B042 | Documentation of Planning Forecasts |
| | | Sole Source | 8-07-B011 | Gas Line Relocation |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 8-07-C007 | CA Supplement |
| | | Sole Source | 10-030-208 | Training |
| 40 | Evaluation of Options | RFP | 8-07-C001 | Program Management |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| 41 | Cost or Price Analysis | Small Purchase | 2-09-B196 | Coffee Services |
| | | RFP | 8-07-B009 | Local and Long Distance Services |
| | | RFP | 8-07-C001 | Program Management |
| | | RFP | 8-09-B019 | Temp Accounting and Audit Personnel |
| 42 | Written Record of Procurement History | Small Purchase | 2-09-B196 | Coffee Services |
| | | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C003 | Rail Office Lease |
| | | RFP | 8-07-C001 | Program Management |
| | | RFP | 1-07-C224 | Audit of Financial Statement - Rail |
| | | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-08-B046 | Permitting and Design Review Services |
| | | Sole Source | 8-07-B017 | Liaison Services |
| | | Sole Source | 8-08-B034 | Utility Relocation |
| | | Sole Source | 8-08-B021 | Before and After Study |
| | | Sole Source | 8-08-B007 | Utility Relocation |
| | | Sole Source | 8-08-B016 | Utility Relocation |
| | | Sole Source | 8-08-B003 | Utility Relocation |

| No. | Element | Deficient Contracts | | |
|-----|---------------------------------------|----------------------|-----------------|--|
| | | Type of Solicitation | Contract Number | Contract Description |
| 42 | Written Record of Procurement History | Sole Source | 8-07-B020 | Technical Advisory Services and Rail Vehicles |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| | | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-07-B011 | Gas Line Relocation |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 8-07-C007 | CA Supplement |
| | | Sole Source | 10-030-208 | Training |
| 43 | Exercise of Options | RFP | 1-07-C224 | Audit of Financial Statement - Rail |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| 44 | Out of Scope Changes | RFP | 1-07-C224 | Audit of Financial Statement - Rail |
| | | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-08-B046 | Permitting and Design Review Services |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-09-B016 | Community Outreach |
| | | Sole Source | 8-07-B020 | Technical Advisory Services and Rail Vehicles |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-07-C007 | CA Supplement |
| 45 | Advance Payments | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 8-07-B020 | WMATA Cooperative Agreement |
| 47 | Time and Materials Contracts | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| 48 | Cost Plus Percentage of Cost | RFP | 8-07-C001 | Program Management |
| | | Sole Source | 8-07-C007 | CA Supplement |
| 50 | Piggybacking | State Contract | 8-10-P019 | 8 Ford Escapes |
| 52 | Serial Price Negotiations [A&E] | RFP | 8-07-C001 | Program Management |

| No. | Element | Deficient Contracts | | |
|-----|---------|----------------------|-----------------|--|
| | | Type of Solicitation | Contract Number | Contract Description |
| 56 | Clauses | Small Purchase | 3-10-0020 | Carwash Coupon Books |
| | | Small Purchase | 3-09-0928 | Engine |
| | | Small Purchase | 2-10-B130 | Coffee Services |
| | | Small Purchase | 2-09-B196 | Coffee Services |
| | | RFP | 8-09-C005 | Special Inspectors - Dulles Corridor Rail |
| | | RFP | 8-07-C003 | Rail Office Lease |
| | | RFP | 8-07-B009 | Local and Long Distance Services |
| | | RFP | 8-07-C001 | Program Management |
| | | RFP | 8-09-B019 | Temp Accounting and Audit Personnel |
| | | RFP | 1-07-C224 | Audit of Financial Statement - Rail |
| | | Sole Source | 8-07-P005 | Legal Services for Tyson's Real Estate |
| | | Sole Source | 8-09-B020 | Financial Advisory Services - Dulles Corridor |
| | | Sole Source | 2-09-0327 | 125 Plaques |
| | | Sole Source | 2-09-02127 | Sponsorship: Dulles Corridor |
| | | Sole Source | 8-08-B037 | Utility Relocation |
| | | Sole Source | 8-08-B046 | Permitting and Design Review Services |
| | | Sole Source | 8-07-B015 | Financial Advisory Services |
| | | Sole Source | 8-07-B017 | Liaison Services |
| | | Sole Source | 8-08-B034 | Utility Relocation |
| | | Sole Source | 8-08-B021 | Before and After Study |
| | | Sole Source | 8-08-B007 | Utility Relocation |
| | | Sole Source | 8-08-B003 | Utility Relocation |
| | | Sole Source | 8-09-B016 | Community Outreach |
| | | Sole Source | 8-08-B010 | Legal Counsel Services |
| | | Sole Source | 8-07-B020 | Technical Advisory Services and Rail Vehicles |
| | | Sole Source | 8-10-B010 | Technical Advisory Services |
| | | Sole Source | 8-08-B001 | Tax Consulting Services |
| | | Sole Source | 8-07-B016 | Legal Counsel Services |
| | | Sole Source | 8-10-B014 | Consultant Services for Professional Schedule Analysis |
| | | Sole Source | 8-07-C019 | CMRR Services |
| | | Sole Source | 8-08-B002 | Environmental Insurance |
| | | Sole Source | 8-08-B042 | Documentation of Planning Forecasts |
| | | Sole Source | 8-07-B011 | Gas Line Relocation |
| | | Sole Source | 8-08-C043 | Management of Insurance and Risk Management Program |
| | | Sole Source | 10-030-208 | Training |

Appendix B: Organizational Chart



Appendix C: Independent Cost Estimate

Independent Government Cost Estimate

| Direct Labor by Category | Person Days | | RATE | | TOTAL |
|--|-------------|---|-------|----------|-------|
| _____ | _____ | X | _____ | = | _____ |
| _____ | _____ | X | _____ | = | _____ |
| _____ | _____ | X | _____ | = | _____ |
| | | | | Subtotal | _____ |
| Fringe Benefits (_____ % of Labor) | | | | | _____ |
| Overhead (____ % of labor and fringe benefits) | | | | | _____ |
| Direct Material Costs | | | | | _____ |
| Purchased parts and supplies | | | | | _____ |
| Subcontracts | | | | Subtotal | _____ |
| Other Material | | | | | _____ |
| Total Material Costs | | | | | _____ |
| Other Direct Costs | | | | | _____ |
| Travel | | | | | _____ |
| Consultants | | | | Subtotal | _____ |
| Other | | | | | _____ |
| Total Other Direct Costs | | | | | _____ |
| TOTAL DIRECT COSTS | | | | | _____ |
| General Administrative | | | | | _____ |
| Expense (____ %) x TOTAL DIRECT COSTS | | | | | _____ |
| | | | | Subtotal | _____ |
| Fee/Profit* | | | | | _____ |
| TOTAL ESTIMATED COST | | | | | _____ |

The fee will vary between 0 and 15% depending on the type of cost contract being considered. Percentages (%0 are statutory limitations.

- Supply and service contracts: not to exceed 10% of contract's estimated costs.
- Research and development: not to exceed 15% of contract's estimated costs.
- Architect-engineer contract: not to exceed 6% of the estimated cost of construction.

Example: Independent Cost Estimate for Task Order with T&M Rates

| Period of Performance | Name of Task Order | | |
|--|----------------------------|----------------------------------|-----------------------------------|
| | FY | | |
| Direct Labor | Labor Rate (\$/hr.) | Total Hours | Estimated Labor Costs |
| ITAM Coordinator | | 1960 | \$0.00 |
| GIS Program Analyst | | 1960 | \$0.00 |
| Total Direct Labor Costs | | | \$0.00 |
| Other Direct Costs (Material) | Qty | Est. Cost Per Month | Total Cost for # of months |
| Leased Vehicles | | | \$0.00 |
| Gasoline | | | \$0.00 |
| Total Other Direct Costs (Material) | | | \$0.00 |
| Other Direct Costs (Travel) | # of est trips. | Est. travel cost per trip | |
| \$1500.00 | | \$0.00 | |
| Total Other Direct Costs (Travel) | | \$0.00 | |
| Direct Labor | \$0.00 | | |
| Other Direct Costs (Material) | \$0.00 | | |
| Other Direct Costs (Travel) | \$0.00 | | |
| Profit Fees | \$0.00 | | |
| Grand Total | \$0.00 | | |

Example: Independent Cost Estimate Worksheet for Services

Estimate Valid to: 00/00/0000 Estimated By: Joe Estimator Date: 00/00/0000 Sheet 1 of 1

| COST CATEGORIES | | HOURS | | RATE | | TOTAL |
|-----------------|--|--------------|----------|-----------------|----------|------------------|
| (A) | Direct Labor (by category) | 1,000 | X | \$25,000 | = | \$25,000 |
| | Worker Chief | 2,000 | X | 12.50 | = | 25,000 |
| | Worker Manager | 2,500 | X | 10.00 | = | 25,000 |
| | Worker A | 5,000 | X | 5.00 | = | 25,000 |
| | Worker B | | | | = | \$100,000 |
| (A-1) | Total Direct Labor | | | | = | 0 |
| (B) | Material & Equipment | | | | = | \$100,000 |
| (C) | Total (A-1) + (B) | | | | = | \$150,000 |
| (D) | Overhead @ 150% (Rate (%) x (C) (\$100,000) | | | | = | 0 |
| (E) | Construction | | | | = | 0 |
| (F) | Training | | | | | |
| (G) | Other Direct Costs | | | | = | 0 |
| | Supplies | | | | = | 0 |
| | Equipment Rentals | | | | = | 0 |
| | Travel | | | | = | 0 |
| | Other (Describe) | | | | = | \$250,000 |
| (H) | Direct Costs (no General and Administrative Costs) (Add lines (A-1) through (G)) | | | | = | \$100,000 |
| (I) | General and Administrative Costs (G&A) @ 40% (Rate (%) x (H) \$250,000) | | | | = | \$350,000 |
| (J) | All Costs (Including G&A) (Add lines (H) + (I)) | | | | = | \$35,000 |
| (K) | Profit @ 10% (Rate (%) x (J) \$350,000) | | | | = | \$385,000 |
| (L) | Total Estimated Price (Add lines (J) + (K)) | | | | | |

Example: Independent Cost Estimate Worksheet for Manufacturing/Construction

| Estimate Valid To: 00/00/0000 | | Estimated By: Joe Estimator | | Date: 00/00/0000 | Sheet 1 of 1 |
|-------------------------------|-----------|-----------------------------|--------------------|--------------------|--------------|
| Work Description | Quantity | | Material | Labor | Total |
| | No. Units | Unit Meas. | Per Unit Sub-total | Per Unit Sub-total | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTALS | | | | | |

Example: Independent Cost Estimate Worksheet for Travel

| Travel Worksheet | | | | RFP No. _____ | | | Project Title | | |
|------------------|-----------------|-------------------|----------------|----------------|---------------------------------|--|--|---|-------|
| Round Trip | Number of Trips | Number of Persons | Number of Days | Number of Cars | Airfare x Trips x Persons | Auto Rental @ \$/day x Trips x Days | Communications @ \$/call x Number of Calls | Per Diem @ \$/day x Trips x Persons x Days | Total |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| Signature: | | | | | Date: | | | Total Cost: | |

Checking the Estimate

After the estimate has been prepared, a check for completeness and correctness should be made. This check includes but is not limited to the following.

- Check mathematical extensions and additions for correctness;
- Check takeoff for omissions or oversights. For example, a project that is primarily mechanical in nature may have some electrical, structural, civil work, or demolition required with it. Compare the construction or cleanup labor hours with the schedule to determine a labor force density. Evaluate whether the labor force density can adequately function on the construction or cleanup site, whether shift work might be required, or whether the total labor hours are adequate to complete the required work. These are judgment considerations, but they are very helpful in finding inadequacies in the estimate.
- Check the calculations of the indirect costs. Verify that the vendor quotations used as direct costs do not include indirect costs.
- Compare the construction or cleanup cost with any similar project for an order of magnitude check.
- Compare the current estimate with the previous estimate; explain any discrepancies.

| | | | | | | |
|--|---------------|-------------------------------------|-------------------|----|------------------|----------|
| WBS Number: | Program Name: | Reviewers' Names and Organizations: | Program Location: | | Program Manager: | |
| Review Date: | | | | | | |
| Location: | | | | | | |
| A. Background Data and Conditions | | | | | | |
| <ul style="list-style-type: none"> • Has complete technical scope documentation, including the following elements, been prepared for the estimate. <ul style="list-style-type: none"> – Description of the work to be performed; – End condition or end product of work; – Performance criteria and requirements; – Discrete tasks and deliverables; – Resource requirements; – Sequence of events and discrete milestones; – Performance methodology and task plans; and – Work not included in the scope. • Are the major assumptions used in developing the technical scope for the program clearly identified and justified in the technical scope documentation? • Are technical logic diagrams and/or process flow diagrams, where appropriate, included in the technical scope documentation? • Have milestone log and milestone description | | | Yes | No | N/A | Comments |

| | | | | |
|---|--|--|--|--|
| <p>sheets been developed that contain descriptions of each milestone associated with the program?</p> <ul style="list-style-type: none"> • Is the rationale used to develop task descriptions and logic diagrams, milestones, and resource requirements explained in the technical scope documentation? • Does the technical scope documentation for the estimate include specific activities associated with the work to be performed and activity-based resource descriptions? • Has an activity dictionary been developed for the program, including detailed descriptions of activities associated with the work to be performed? • Does the technical scope documentation for the estimate include descriptions of support activities (e.g., occupational health and safety, quality assurance, security, etc.) associated with the work to be performed? • Is back-up documentation (such as production or waste management plans, process technical and engineering data, process output or throughput projections, and historical operating data) available for review, used in scope development, and referenced in the technical scope documentation? • Is the technical scope for the estimate consistent with the site mission, regulatory drivers and constraints, and internal and external drivers and constraints (e.g., consent orders, permit conditions, regulations, orders, etc.) identified during the planning process? <p>B. Cost Estimate</p> <ul style="list-style-type: none"> • Are historical cost data included in the cost estimate for the activities for which costs have been estimated? • Do the historical data used to prepare the cost estimate show each activity cost and show the cost of conducting that activity, broken down into the quantity associated with each activity and the labor cost, material cost, and other costs incurred per unit quantity? • Are indirect, overhead, or other costs that are distributed among activities included in the cost estimate clearly and individually identified? • Are direct costs that are associated with individual activities included in the cost estimate clearly and individually identified? • Are the indirect labor costs used throughout the cost estimate approved and audited, and appropriately and correctly identified? | | | | |
|---|--|--|--|--|

| | | | | |
|--|--|--|--|--|
| <ul style="list-style-type: none"> • Are unit labor costs broken down into direct costs and indirect costs? • Has the cost estimate been updated in a timely manner in response to relevant changes in its basis, background data, or assumptions? • Are an appropriate change control document and an estimate development history attached to the cost estimate? • Does the estimate development history include an itemized and chronological list of the changes made to the cost estimate since initiation of its preparation, and the rationale for each change? • Is an estimate purpose statement included in the cost estimate? Does the estimate purpose statement clearly describe the purpose of the estimate? • Is the scope of work for the program for which the cost estimate was prepared adequately described and consistent with the planning and technical scope documentation developed through the planning and scoping process? • Has an estimate-specific work breakdown structure been developed for the program? • Does the estimate-specific WBS organize the work to be performed in a logical and consistent manner? • Is the cost estimate activity-based? • Are activities, quantities, and unit costs associated with the work to be performed clearly identified and defined in the cost estimate? • Has an estimate-specific activity dictionary been developed for the program? • Does the estimate-specific activity dictionary describe all activities associated with the work to be performed in a logical and consistent manner? • Does the estimate-specific activity dictionary describe all activities associated with the work to be performed in a logical and consistent manner? • Are the assumptions and exclusions upon which the cost estimate is based clearly identified and defined in the cost estimate? • Are time and cost assumptions and cost elements associated with each activity clearly identified, defined, and documented in the cost estimate? Cost elements for program activities include: <ul style="list-style-type: none"> – quantity; – unit of measure; – labor hours per unit; – total labor hours; – material usage rate per unit; – total material cost; – equipment usage rate per unit; | | | | |
|--|--|--|--|--|

| | | | | |
|--|--|--|--|--|
| <ul style="list-style-type: none"> – total equipment cost; – overhead rate; and – total overhead allocated cost. • Are significant findings of the cost estimate preparer identified during preparation of the cost estimate included in the cost estimate? • Have estimate factors been used to adjust the cost estimate? If so, have they been adequately documented and appropriately applied? • Have escalation factors been used to escalate the cost estimate? • If escalation factors provided by FTA Headquarters have been used, have they been adequately documented and appropriately applied? • If escalation rates other than the provided by FTA Headquarters have been used, have they been audited and approved by FTA Headquarters? • If escalation rates other than the provided by FTA Headquarters have been used, have they been audited and approved by FTA Headquarters? • Are indirect rates used in the cost estimate adequately documented and appropriately applied? • Are estimate summary and detailed reports included in the cost estimate? • Do the estimate summary and detailed reports provide cost totals for each activity in the activity dictionary and for each cost element in the cost estimate? • Is a schedule included with the cost estimate? • Are activities included in the schedule consistent with those included in the technical scope documentation, activity dictionary, and cost estimate? • Are milestones and deliverables included in the schedule consistent with those included in the technical scope documentation and cost estimate? • Is an estimate criteria document included in the cost estimate? • Does the estimate criteria document clearly describe the methodology by which the cost estimate was developed? • Does the estimate criteria document clearly describe the basis for the cost estimate and the assumptions made in developing the cost estimate? • Has the entire cost estimate package (including technical scope and schedule) for the program been subject to peer review by individuals who were not involved in preparation of the cost estimate, but who are qualified to have prepared the cost estimate themselves? | | | | |
|--|--|--|--|--|

| | | | | |
|--|--|--|--|--|
| <ul style="list-style-type: none"> • Has the peer review considered the elements listed below? • the basis for the assumptions made in developing the cost estimate; • consistency of assumptions made in the cost estimate, technical scope, and schedule; • consistency of definitions of activities in the cost estimate, technical scope, and schedule; • consistency of durations of activities in the cost estimate, technical scope, and schedule; • documentation of productivity and unit cost data for program activities; and • appropriate use of indirect rates, escalation factors, and other factors used by the cost estimate preparer? • Have the findings and recommendations of the peer review been documented in a peer review document? • Is the peer review document included with the cost estimate documentation? • Have the findings and recommendations of the peer review been addressed in revisions to the cost estimate? • Are activities included in the schedule consistent with those included in the technical scope documentation, and cost estimate? | | | | |
|--|--|--|--|--|

Appendix D: Responsibility Determination Form

Bid/RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

| | Acceptable | Comment |
|---|--|----------------------------------|
| 1. Appropriate financial, equipment, facility, and personnel | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____ _____ _____ _____ |
| 2. Ability to meet the delivery schedule | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____ _____ _____ _____ |
| 3. Satisfactory period of performance | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____ _____ _____ _____ |
| 4. Satisfactory record of integrity, not on debarred or suspended listings (attach copy of EPLS search) | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____ _____ _____ _____ |
| 5. Receipt of all necessary data from supplier | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____ _____ _____ _____ |

Appendix E: Fair and Reasonable Price Determination

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- ☐ Found reasonable on recent purchase.
- ☐ Obtained from current price list.
- ☐ Obtained from current catalog.
- ☐ Commercial market sales price from advertisements.
- ☐ Similar in related industry.
- ☐ Personal knowledge of item procured.
- ☐ Regulated rate (utility).
- ☐ Other.

Comments:

☐ Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date

Appendix F: Non-Competitive Procurement Justification

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

_____ Independent Estimate and Cost Analysis are attached.

Purchasing Agent

Senior Manager

Date

Date

| | | |
|------|----|-----|
| PAGE | OF | PGS |
|------|----|-----|

Final Report of the Procurement System Review for the Metropolitan Washington Airports Authority

| DETAIL DESCRIPTION OF COST ELEMENTS (continued) | Vendor A (\$) | Vendor B (\$) | Independent Estimate | Variance |
|---|----------------------|----------------------|-----------------------------|-----------------|
| C. INDIVIDUAL CONSULTANT SERVICES | | | | |
| <i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i> | | | | |
| D. OTHER | | | | |
| <i>TOTAL OTHER</i> | | | | |
| E. SUBTOTAL DIRECT COST AND OVERHEAD | | | | |
| 6. GENERAL AND ADMINISTRATIVE (G&A) RATE % | | | | |
| X \$ BASE (Use 5.E above) | | | | |
| 7. ROYALTIES (if any) | | | | |
| 8. SUBTOTAL ESTIMATED COST | | | | |
| 9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY | | | | |
| 10. SUBTOTAL ESTIMATED COST | | | | |
| 11. FEE OR PROFIT | | | | |
| 12. TOTAL ESTIMATED COST AND FEE OR PROFIT | | | | |
| 13. Discounts | | | | |
| 14. Option Costs (specify) | | | | |
| 15. ADJUSTED COST | | | | |

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available.

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip.

Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Appendix H: Price Analysis

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

DATE:_____

PREPARED BY:_____

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- _____ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- _____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- _____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- _____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

| Item | Proposed Pricing | Average Market Price | Competitor A | Competitor B | In-House Estimate | Other |
|------|------------------|----------------------|--------------|--------------|-------------------|-------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Attachments:

Appendix I: Procurement Summary Example

PROCUREMENT MEMORANDUM

Date: _____
PO / Contract No. _____
Source of Funding: _____

Completed by: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
Small Purchase: _____ A&E Services: _____ Sole Source: _____

Justification if Non-Competitive:

Reason for the Procurement

Contract Type: _____
Rationale for contract type: _____

Reason for Contractor selection or rejection:

Lowest responsive, responsible bidder: _____

Evaluation results
were: _____

Basis for Contract Price:

Accepted contractor's proposed pricing: _____
Negotiated Price (attached memorandum) _____
Other: _____

Cost / Price Analysis:

The price offered by the supplier was within ____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____
Pricing discrepancies between the offers was attributed to _____
Other sources/data used to affirm price reasonableness were _____

Summary of Responsibility and Responsiveness Checks

Award

Date of contract award: _____
Board Approval (Attach Meeting Minutes): _____

Change Orders

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

Appendix J: Contract/Purchase Order File Index (FOR IFB ONLY)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section A - SOLICITATION DOCUMENTS | | |
|---|-------------------------------------|-------------------|
| Tab No. | Document(s) | Audited By |
| 1 | Purchase Request | |
| 2 | Specifications & DBE Goals | |
| 3 | Requirement Justification | |
| 4 | Independent Cost Estimate | |
| 5 | Bidder's List | |
| 6 | Justification of Procurement Method | |
| 7 | Copy of IFB | |
| 8 | Proof of Publication | |
| 9 | IFB Attachments/Modifications | |
| 10 | Pre-Bid Minutes & List of Attendees | |
| 11 | Correspondence with Bidders | |
| 12 | Protests Prior to Bid Opening | |
| 13 | Interoffice Correspondence | |
| 14 | Review for Responsiveness | |

1. **Contract No.**_____
2. **Contract Administrator**_____
3. **Date**_____

Contract/Purchase Order File Index (FOR IFB ONLY) (continued)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section B - AWARD DOCUMENTS | | |
|------------------------------------|---|-------------------|
| Tab No. | Document(s) | Audited By |
| 1 | Rationale for Method of Procurement Copy of Each Bid | |
| 2 | Late Bids – Bid Errors | |
| 3 | Bid Analysis/Tabulation Sheet | |
| 4 | Technical Evaluation and Pre-Award Survey | |
| 5 | Affirmative Action Evaluation/DBE Plan | |
| 6 | Bidder Responsibility Determination | |
| 7 | Price Analysis | |
| 8 | Record of Negotiation for Single Bid (If Applicable | |
| 9 | Justification of Contract Type | |
| 10 | Award Recommendation Memo | |
| 11 | Board Resolution | |
| 12 | Notice of Award | |
| 13 | Notice to Unsuccessful Bidders (Bond, Check Returns) | |
| 14 | FTA Approval | |
| 15 | Legal Review of Contract Documents | |
| 16 | Contract Document (Drawings not required) | |
| 17 | Bond & Certificates of Insurance | |
| 18 | Notice to Proceed | |
| 19 | Purchase Order (IF applicable) | |

Contract/Purchase Order File Index (FOR IFB ONLY) (continued)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section C – CONTRACT ADMINISTRATION DOCUMENTS | | |
|--|--|-------------------|
| Tab No. | Document(s) | Audited By |
| | | |
| 1 | Post Award Conference | |
| 2 | Status Reports | |
| 3 | Change Notices/Modifications/Change Orders | |
| 4 | Site Visit Reports | |
| 5 | Progress Meeting Minutes | |
| 6 | Quality Assurance Records | |
| 7 | Termination/Stop Work Notices or Resolution Plan | |
| 8 | Invoices and Check Requests | |
| 9 | Records of Payment | |
| 10 | Advance or Progress Payments | |
| 11 | Notice of Substantial Acceptance | |
| 12 | Punch List Discrepancies | |
| 13 | Notice of Final Acceptance | |
| 14 | Notice of Claims | |
| 15 | Release of Claims/Bonds | |
| 16 | Assignments | |
| 17 | Notice of Final Payment | |
| 18 | Audit Reports | |
| 19 | Liquidated Damages | |
| 20 | Close Out Documentation | |

Contract/Purchase Order File Index (FOR RFP ONLY)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section A - SOLICITATION DOCUMENTS | | |
|---|---|-------------------|
| Tab No. | Document(s) | Audited By |
| 1 | Purchase Request Rationale for Method of Procurement | |
| 2 | Specifications/Statement of Work | |
| 3 | Justification for Procurement | |
| 4 | Cost Estimate | |
| 5 | Set Aside Decision/DBE Goal | |
| 6 | Justification of Procurement Method | |
| 7 | List of Prospective Proposers | |
| 8 | Proof of Publication | |
| 9 | Copy of RFP | |
| 10 | Addenda | |
| 11 | Pre-Proposal Minutes & List of Attendees | |
| 12 | Correspondence with Bidders | |
| 13 | Interoffice Correspondence | |
| 14 | Review for Responsiveness | |

Contract No._____ **Contract Administrator**_____

Date_____

Contract/Purchase Order File Index (FOR RFP ONLY) (continued)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section B - AWARD DOCUMENTS | | |
|------------------------------------|---|-------------------|
| Tab No. | Document(s) | Audited By |
| 1 | Copy of Each Proposal | |
| 2 | Proposal Tabulation Sheet | |
| 3 | Evaluation Team Notification | |
| 4 | Evaluation Sheet/Matrix | |
| 5 | Pre-Award Survey | |
| 6 | Determination of Competitive Zone | |
| 7 | Invitation for Oral Interviews | |
| 8 | Notice of Rejection | |
| 9 | Minutes of Discussions | |
| 10 | Correspondence with Proposers | |
| 11 | Cost or Price Analysis | |
| 12 | Justification for Contract Type | |
| 13 | Negotiation Memorandum | |
| 14 | Copy of Each Best and Final Offer | |
| 15 | Award Recommendation Memo | |
| 16 | Board Resolution | |
| 17 | Legal Review of Contract Documents | |
| 18 | Notice of Award | |
| 19 | Notice to Unsuccessful Proposers | |
| 20 | Procurement Summary | |
| 21 | Determination and Findings | |
| 22 | Bonds | |
| 23 | Certificates of Insurance | |
| 24 | Contract Document (Drawings not required) | |
| 25 | Notice to Proceed | |
| 26 | Purchase Order | |

Contract/Purchase Order File Index (FOR RFP ONLY) (continued)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab column.

| Section C – CONTRACT ADMINISTRATION DOCUMENTS | | |
|--|--|-------------------|
| Tab No. | Document(s) | Audited by |
| 1 | Post Award Conference | |
| 2 | Quality Assurance Records | |
| 3 | Change Notices/Modifications/Change Orders | |
| 4 | Periodic Status Reports | |
| 5 | Contractor Evaluation Form | |
| 6 | Site Visit Reports | |
| 7 | Termination/Stop Work Notices or Resolution Plan | |
| 8 | Invoices and Check Requests | |
| 9 | Records of Payment and Receipts | |
| 10 | Advance or Progress Payments Documents | |
| 11 | Notice of Substantial Acceptance | |
| 12 | Punch List Discrepancies | |
| 13 | Notice of Final Acceptance | |
| 14 | Notice of Claims | |
| 15 | Release of Claims/Bonds | |
| 16 | Assignments | |
| 17 | Notice of Final Payment | |
| 18 | Audit Reports | |
| 19 | Liquidated Damages | |
| 20 | Close Out Documentation | |

Appendix K: Change Order Review Checklist

| <i>Date</i> | | | |
|---|-----------------|------------|----------------|
| <i>Contract Number</i> | | | |
| <i>Contractor</i> | | | |
| <i>Contract Title</i> | | | |
| <i>Reviewer</i> | | | |
| <i>New Contract Total</i> | | | |
| <i>Change Order Number</i> | | | |
| <i>Dollar Value Increase</i> | | | |
| <i>Length of Time Extension Granted</i> | | | |
| <i>New Performance Period End Date</i> | | | |
| | | | |
| Change Order Checklist | Included | N/A | Comment |
| 1. In-house Estimate Prepared | | | |
| 2. Project Manager Approval | | | |
| 3. AWO Scope Meeting Held | | | |
| 4. Contractor Proposal Includes Impact Costs, Price | | | |
| 5. Cost Analysis Conducted | | | |
| 6. Negotiation Memorandum | | | |
| 7. Written Record of Change (attach Change Order) | | | |
| 8. Evidence of Board Approval Prior to Initiation of changed Work | | | |
| 9. Notice to Proceed | | | |
| 10. Work Authorized within Contract Scope | | | |
| 11. No Evidence of Arbitrary Action | | | |
| Other Comment | | | |
| | | | |

Appendix L: Contract Clauses

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

| PROVISION | Professional Services/A&E | Operations/ Management | Rolling Stock Purchases | Construction | Materials & Supplies |
|---|--------------------------------------|--------------------------------------|---|---|---|
| No Federal Government Obligations to Third Parties (by Use of a Disclaimer) | All | All | All | All | All |
| False Statements or Claims Civil and Criminal Fraud | All | All | All | All | All |
| Access to Third Party Contract Records | All | All | All | All | All |
| Changes to Federal Requirements | All | All | All | All | All |
| Termination | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. | >\$10,000 if 49 CFR Part 18 applies. |
| Civil Rights (Title VI, EEO, ADA) | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 | >\$10,000 |
| Disadvantaged Business Enterprises (DBEs) | All | All | All | All | All |
| Incorporation of FTA Terms | All | All | All | All | All |
| Debarment and Suspension | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 | >\$25,000 |
| Buy America | | | >\$100,000 | >\$100,000 | >\$100,000 |
| Resolution of Disputes, Breaches, or Other Litigation | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Lobbying | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Air | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Clean Water | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 | >\$100,000 |
| Cargo Preference | | | For property transported by ocean vessel. | For property transported by ocean vessel. | For property transported by ocean vessel. |
| Fly America | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. | For foreign air transport or travel. |

| PROVISION | Professional Services/A&E | Operations/ Management | Rolling Stock Purchases | Construction | Materials & Supplies |
|--|-----------------------------------|---|-------------------------|---|---|
| Davis-Bacon Act | | | | >\$2,000 (including ferry vessels) | |
| Contract Work Hours and Safety Standards Act | | >\$100,000 (except transportation services) | >\$100,000 | >\$100,000 (including ferry vessels) | |
| Copeland Anti-Kickback Act Section 1 Section 2 | | | | All All exceeding \$2,000 (including ferry vessels) | |
| Bonding | | | | \$100,000 | |
| Seismic Safety | A&E for New Buildings & Additions | | | New Buildings | |
| Transit Employee Protective Arrangements | | Transit Operations | | | |
| Charter Service Operations | | All | | | |
| School Bus Operations | | All | | | |
| Drug Use and Testing | | Transit Operations | | | |
| Alcohol Misuse and Testing | | Transit Operations | | | |
| Patent Rights | Research & Development | | | | |
| Rights in Data and Copyright Requirements | Research & Development | | | | |
| Energy Conservation | All | All | All | All | All |
| Recycled Products | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | | Contracts for items designated by EPA, when procuring \$10,000 or more per year | Contracts for items designated by EPA, when procuring \$10,000 or more per year |
| Conformance with ITS National Architecture | ITS Projects | ITS Projects | ITS Projects | ITS Projects | ITS Projects |
| ADA Access | A&E | All | All | All | All |
| Notification of Federal Participation for States | Limited to States | Limited to States | Limited to States | Limited to States | Limited to States |

Appendix M: Copy of MWAA Response to Draft Final Report dated March 24, 2011

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY



March 24, 2011

Ms. Letitia Thompson
Regional Administrator
Federal Transit Administration, Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103-4124

RE: FY 2011 Federal Transit Administration (FTA) Procurement System Review, Draft Final Report, Dulles Corridor Metrorail Project, Phase I

Dear Ms. Thompson:

In response to your letter of February 28, 2011, the Metropolitan Washington Airports Authority (Airports Authority) has reviewed the Report of the Procurement System Review draft report prepared by Calyptus Consulting, Inc., dated February 23, 2011.

Mr. Harris' draft report is not only thorough but also constructive and provides a clear path to an improved Airports Authority grants project procurement process.

Each of Mr. Harris' listed deficiencies requires either corrective action or a specific new procurement policy and procedure on the part of the Airports Authority. Each new procedure will be implemented with an appropriate and intensive training program. It would be appreciated if the Airports Authority may consult with Mr. Harris on occasion as this training program is developed.

Please see on the enclosed chart a listing of each of the deficiencies noted by Mr. Harris and the Airports Authority proposed action plan. Also, enclosed are the procedures the Airports Authority's Office Of Audit will use to verify compliance where required. In many cases, the actions/plan requires training and verification. The training will be conducted in the timely fashion as requested by the review. Verification will be overseen by our Office of Audit. In addition to the review findings, the Airports Authority's management will thoroughly consider Mr. Harris' suggested improvements to our procurement system. I must, however, point out one misunderstanding regarding our Board of Director's (Board) role in this process. While our Board is authorized to initiate procurements, those commercial agreements are awarded and managed in accordance with standard Airports Authority procedure.

Ms. Letitia Thompson
Federal Transit Administration, Region III
Page 2

I again want to assure you that this entire matter is of the highest priority to me personally and to the Airports Authority as an organization. We are proud of our accomplishments to date on this challenging project and we look forward to working with the FTA in the future. Our goal is to address all procurement system deficiencies and use this experience to strengthen oversight of our rail construction program, to the benefit of not only our Airports but also the entire region.

Sincerely,



Lynn Hampton
President and Chief Executive Officer

EFS:klm

Enclosure

cc: Brian Glenn, FTA
Steven Baker, Airports Authority
Frank Holly, Jr., Airports Authority
Valerie Holt, Airports Authority
Margaret E. McKeough, Airports Authority

| | | FTA | | MWAA | | | | | | |
|---|--|----------------|--|---|---------------|---|------------|-----------|----------|----------|
| | | 2/28/2011 | | Authority | Resp | Est. Comp. | Add to | Proc. doc | Training | Training |
| | Deficient Element | # Deficiencies | FTA Corrective Action Plan | Corrective Action Plan | Staff | Date | Proc. doc? | Date | Req'd | Date |
| 2 | <u>Contract Administration System</u> - MWAA's Contracting Manual was judged to be insufficient based on the observation of the actual contract administration processes taking place at the Agency. Three of the largest contracts – the D-B contract, the CA Supplement, and the Jacobs contract – did not have contract values or periods of perf. Unit prices were not included in the CA Supplement. In addition, the d-b contractor was authorized to incur costs beyond the end date established in a number of task orders issued under the supplement, including one task order for over \$40,000,000. Without these controls in the contract, there is no effective contract admin system. It is the practice of MWAA for non-transit procurements to have an open period of performance and contract value. Out-of-scope modifications were found in construction, professional | System-wide | MWAA should establish contract values & perf periods, as well as unit prices, for all contracts within thirty (30) days from the date of the final report. Contract values should be approved by the MWAA BoD. Task orders under the Comp. Agreement Sup. should be revised to prohibit the incurrence of costs beyond the end dates of open orders. Revise procedures in accordance with FTA C 4220.1F to emphasize that contract mods are to be of a limited number and dollar value & should not be a result of poor planning or an inadequate initial SOW. Training provided to proc staff. Audit within 90 days to verify compliance. | Contracting Officers and COTRs will modify these three contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. Contract approvals will be presented to the Board of Directors in accordance with the established delegation of Authority. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| | services, A&E, and other type contracts reflecting changes to contract amounts, duration, and unit prices outside the original intent of the contracts. | | | | | | | | | |
| 3 | <u>Written Protest Procedures</u> - This requirement was found to be deficient because MWAA's Written Protest Procedures did not specify the need to notify FTA of any protests received on procurement involving FTA funds. | System-wide | MWAA should revise its policies and procedures in accordance with FTA C 4220.1F and conduct procurement staff training within thirty (30) days from the date of the final report. | Contracting Officers will notify the FTA if there is a protest on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 5 | <u>System for ensuring most Efficient & Economic Purchase</u> - This requirement was found to be deficient due to a number of practices in place at MWAA that inhibit efficient and economic purchasing. The sole source method of award was used disproportionately and unnecessarily, limiting competition on a number of large dollar value contracts for legal and financial services. Furthermore, in three (3) contracts – the Comprehensive Agreement Supplement, the Jacobs/Carter-Burgess A&E contract for project management services, and the WMATA Cooperative Agreement – no contract amount was established, allowing for open-ended contracts with those contractors. | System-wide | MWAA should amend Comp Agreement, WMATA, and Jacobs, revise the associated policies and procedures in accordance with FTA C 4220.1F, and conduct procurement staff training within ninety (90) days from the date of the final report. | Contracting Officers and COTRs will modify these three contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
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| 6 | <u>Procurement Policies & Procedures</u> - This requirement was found to be deficient due to the absence or inadequacy of several areas mandated by FTA requirements. The most critical deficiency was the section on sole source awards, which instructed that sole source awards could be made to certain services deemed to be "categorical exceptions." When procuring legal or financial services, or when contracting with utility companies, no competition is required. These "categorical exceptions" are not recognized by FTA and should be removed from the list of sole source justifications. | System-wide | MWAA should revise their policies and procedures in accordance to FTA C 4220.1F to ensure compliance with FTA requirements for the DCMP & conduct proc staff training within ninety (90) days from the date of the final report. Compliance with the revised procedures should be confirmed by MWAA Internal Audit. | Contracting Officers and COTRS will eliminate the use of the "Categorical Exception" on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | Concur Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 7 | <u>Independent Cost Estimates</u> - Of the forty (40) procurements reviewed for this requirement, fourteen (14) were found to be not deficient and twenty-six (26) were found to be deficient. | 26 | MWAA must revise its policies and procedures in accordance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | All Federally funded Rail project procurements will be reviewed by the COs and COTRS to ensure an Independent Cost Estimate is in the procurement file. COTRS will be given the sample ICE form provided by the FTA Auditors as guidance. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRS | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 10 | <u>Unnecessary Experience and Excessive Bond</u> - Thirty-six (36) procurements were reviewed for this requirement. Thirty-five (35) were found to be not deficient and one (1) was found to be deficient. In a contract for special inspections services, a 100% performance bond was required. For a professional services contract, this is excessive and could restrict competition. | 1 | MWAA must revise its policies and procedures to address the specific bonding requirements according to the type of contract as stated in FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers and COTRS will eliminate the use of the Unnecessary Experience and Excessive Bond on any Federally funded Rail project procurements. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 12 | <u>Arbitrary Action</u> - Of the thirty-nine (39) procurements reviewed for this requirement, thirty-six (36) were found to be not deficient and three (3) were found to be deficient. In the CTI contract, 3 different evaluation methods were listed in the solicitation; cost and other factors, the use of minimally acceptable eval. criteria, and lowest price technically acceptable. It was difficult to determine which method was ultimately used. In a contract for pmss, there was no contract value making it difficult to determine how the award was made. Further, it was unclear as to the type of | 3 | MWAA should terminate & recompet the contract for insurance & risk mgmt services. MWAA must revise its policies & procedures in accordance with FTA C 4220.1F, conduct proc staff training, & verify compliance with updated requirements within thirty (30) days from the date of the final report | The Authority insurance brokerage contract is currently being resolicited. The new insurance program will be in effect in August 2011. | Proc. | 8/1/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| | contract used (TMs or Cost plus Fixed Fee). In a contract for insurance and risk mgt services, a new contract was created & treated as if it were an extension to 2 existing contracts. | | | | | | | | | |
| 15 | <u>Contract Period of Performance Limitations</u> - Of the two (2) procurements reviewed for this requirement, both were found to be deficient. In both the WMATA Cooperative Agreement and in the Comprehensive Agreement Supplement, no contract period of performance was included. | 2 | MWAA must establish accurate contract terms in the WMATA Cooperative Agreement and the Comprehensive Agreement Supplement, make changes to its policies and procedures, conduct training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers and COTRs will modify these two contracts to be in compliance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in the new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/11 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 16 | <u>Written Procurement Selection Procedures</u> - Of the 6 procurements reviewed for this requirement, 4 were considered to be not deficient and 2 were considered to be deficient. In a contract for special inspections, the RFP stated that selection would be made on the basis of Lowest Price Technically Acceptable, but in practice, not all technically acceptable bidders were considered, and it is unclear how the actual evaluation was conducted. In a lease contract, no key evaluation criteria were documented in the quotation documents to give potential bidders a chance to respond to areas of interest to the MWAA. | 2 | MWAA must revise its policies and procedures in accordance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers will ensure that written evaluation procedures are provided in each Rail Project procurement award file. | Proc. | 5/6/11 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 17 | <u>Solicitation Prequalification Criteria</u> - The one contract reviewed for this requirement was found to be deficient. The contract for special inspections was awarded without correctly adhering to pre-qualification procedures. The solicitation stated that the solicitations would only be sent to existing VDGScontract holders. There was no provision provided to allow bidders | 1 | MWAA must revise policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers will ensure that solicitation prequalification criteria is appropriate for all Rail Project procurements. | Proc. | Concur. Solic. process underway. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| | to qualify during the solicitation period. It was unclear how other offerors were able to submit proposals under this procurement. | | | | | | | | | |
| 18 | <u>Award to Responsible Contractors</u> - Of the thirty-five (35) procurements reviewed for this requirement, three (3) were found to be not deficient and thirty-two (32) were found to be deficient. The three procurements that were found to be not deficient were all non-transit; these procurements included all the missing documentation, including the check of the Excluded Parties List System (EPLS) Rail procurements universally lacked the EPLS check and did not follow established policies and procedures. | 32 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Written responsibility determination will be included in each rail project award file. All procurements will be checked with EPLS and findings documented. | Proc. | 5/6/11 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 19 | <u>Sound and Complete Agreement</u> - Of the 35 contracts reviewed for this requirement, 31 were found to be not deficient and 4 were found to be deficient. The CA Supplement does not have a contract value associated with it, nor does it have a period of performance. The Jacobs/Carter-Burgess contract for project management also has no contract value or period of performance. The WMATA CA does not have a contract value associated with it. A contract for ASCE training was completed with a purchase card despite being over the micro-purchase threshold, thus having no terms and conditions. | 4 | MWAA must amend the Comprehensive Agreement Supplement, WMATA Cooperative Agreement, and the Jacobs/Carter-Burgess A&E contract for project management services so that either contract terms or contract financial values are reflected in the agreements (whichever is applicable), revise its policies and procedures in conformance with FTA C 4220.1F, conduct staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers and COTRs will modify these contracts to be in compliance by analyzing each contract and including a contract value and period of performance. In addition, all Rail office contracts will be reviewed and modified by COTRs to ensure compliance. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 21 | <u>Fair and Reasonable Price Determination</u> - Of the 13 micro-purchase files reviewed for this requirement, 1 was found to be not deficient and 12 were found to be deficient. The deficiencies arose from the fact that micro-purchases are generally made via the PCard, and the PCard process has no step that requires the documentation on the part of the user that the price being paid for an item is fair and reasonable. | 12 | MWAA must revise its policies and procedures in accordance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Authority Office of Finance will revise the P Card Manual to require this documentation. | | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 24 | <u>Complete Specifications</u> - Of the 40 procurements reviewed for this requirement, 35 were found to be not deficient and 5 were found to be deficient. These deficiencies occurred where there was either no written statement of specifications or work developed, or where the work described was so general that it allowed for a significant number of change orders because the original scope of services was ill-defined, such as the contracts for legal services (2 procurements), financial advisory services, and tax consulting services. Additionally, the CA Supplement did not include overall SOW for Services and RoW acquisitions. | 5 | MWAA must amend the Comprehensive Agreement Supplement and contracts for legal services, financial services, and tax consulting services; revise its policies and procedures in accordance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | Contracting Officers and COTRS will modify the five contracts noted to ensure there is detailed Statement of Work. Also, Contracting Officers and COTRS will review all Federally funded Rail project procurements to ensure a detailed Statement of Work is included. This procedure will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | 5/6/11 Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 36 | <u>Evaluation [RFP]</u> - Of the 6 procurements reviewed for this requirement, 4 were found to be not deficient and 2 were found to be deficient. In a contract for special inspection services, the RFP criteria were not listed in priority order that corresponded to the order of priority given in the evaluation of those criteria. In the contract for the rail office lease, there | 2 | MWAA must provide training and guidance to procurement staff on the process to be followed when developing evaluation criteria, and the requirements on how to reflect the evaluation criteria in solicitations. Evidence of this corrective action must be provided within thirty (30) days from the date of the final report. | Contracting Officer will provided documentation to the office lease file to demonstrate a technical evaluation was performed. A cost analysis will be provided as well. Also, Contracting Officers will ensure that technical evaluations are followed in Federally funded Rail Project | Proc. | Concur Con. Manual reference to follow. | No | | No | |

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| | was no documentation that a technical evaluation was performed based on the bona fide criteria | | | procurements and solicitations. | | | | | | |
| 38 | <u>Sole Source if Other Award is Infeasible</u> - Of the 29 procurements reviewed for this requirement, 13 were found to be not deficient and 16 were found to be deficient. The overwhelming majority of these deficiencies arose from the use of MWAA's "categorical exception" for legal services, financial services, and utilities as a basis for sole source justification. These exceptions do not comply with FTA requirements. | 16 | MWAA must modify its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and submit follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. Any contracts not meeting these standards must be terminated and recompleted. | Contracting Officers and COTRs will provide sufficient justification for Sole Source procurements and will eliminate the use of "categorical exceptions" in any Federally funded Rail project procurement. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 39 | <u>Cost Analysis Required [Sole Source]</u> - Of the 29 procurements reviewed for this requirement, 1 was found to be not deficient and 28 were found to be deficient. A cost analysis including a detailed profit analysis was not performed. MWAA has a document that describes cost analysis but this document is not included in the MWAA procedures manual. | 28 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | All Federally funded Rail project procurements will be reviewed by the COs and COTRs to ensure a Cost Analysis is in the procurement file. COTRs will be given the sample Cost Analysis form provided by the FTA Auditors as guidance. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 40 | <u>Evaluation of Options</u> - FTA C 4220.1F requires that the option quantities or periods contained in the contractor's bid or offer are evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement. Of the eight (8) procurements reviewed for this requirement, four (4) were found to be not deficient and four (4) were found to be deficient. | 4 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | The Contracting Officer will evaluate all unawarded contract options, based on COTR analysis, prior to acceptance and will resolicit the procurement if the analysis concludes that a different business approach would benefit the Authority. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | Concur Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 41 | <u>Cost or Price Analysis</u> - FTA C 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications. Of the 10 procurements reviewed for this requirement, 6 were found to be not deficient & 4 were found to be deficient | 4 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | All Federally funded Rail project procurements will be reviewed by the COs and COTRs to ensure a Cost Analysis is in the award file. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 42 | <u>Written Record of Procurement History</u> - Of the 40 procurements reviewed for this requirement, 13 were found to be not deficient and 27 were found to be deficient. The basis for contract price was often missing; this omission is likely due to the widespread lack of cost and price analyses performed in connection with the procurements, the addition of budget amounts to contracts, and the lack of procurement planning on procurements above the small purchase threshold. | 27 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training on proper file documentation and submit the results of a follow-up audit within thirty (30) days from the date of the final report. | All Federally funded Rail project procurements will be reviewed by the COs and COTRs to ensure a Written Record of Procurement History is in the procurement file. The Written Record of Procurement History may be included in the Pre-Negotiation Memo. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 43 | <u>Exercise of Options</u> - Of the 3 procurements reviewed for this requirement, all 3 were found to be deficient. There were two main reasons for these finding of deficiency. First, options were not evaluated at the time they were exercised in order to ensure that they were still cost effective under the current market conditions. Second, options that were not evaluated at the time of contract award were not treated as sole source procurements when ultimately exercised. No cost analysis was performed and no justification was provided. | 3 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training on proper file documentation and submit the results of a follow-up audit within thirty (30) days from the date of the final report. | Contracting Officers and COTRs will evaluate the cost effectiveness of any Federally funded Rail project contract before exercising any options. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 44 | <u>Out of Scope Changes</u> - Of the 10 procurements reviewed for this requirement, all 10 were found to be deficient. In cases where out of scope changes were made, these changes were not treated as sole source procurements. There was no evaluation of whether the work should be re-bid. Additional funding was added to contracts without any apparent analysis. In the case of the CA Supplement, no unit prices were established in the Agreement, making most changes for utility | 10 | MWAA must revise its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training on proper file documentation, and submit the results of a follow-up audit within thirty (30) days from the date of the final report. | Contracting Officers and COTRs will eliminate Out of Scope changes in any Federally funded Rail project contract. Contracting Officers and COTR's will eliminate the use of Categorical Exceptions on any Federally funded rail project procurement. This requirement will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | Concur. Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| | relocation out of scope. In a legal services contract, the contract value rose from \$75,000 to \$600,000 without consideration for competition or re-pricing. On the whole, this deficiency was especially prevalent in contracts for services that fell under the MWAA's "categorical exceptions." | | | | | | | | | |
| 45 | <u>Advance Payments</u> - Of the 35 procurements reviewed for this requirement, 33 were found to be not deficient and 2 were found to be deficient. In the WMATA Agreement for tech advisory services and rail vehicles, advance payments are made on a quarterly basis without FTA approval. In a small purchase procurement of picture frames, an advance payment was also required and FTA concurrence was not obtained. | 2 | MWAA must respond with detailed procedures, training, oversight and follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. If the Authority desires to continue using advance payments, these payments must cease until FTA approval is received. | The Contracting Officers and COTRs will identify any past advanced payments to contractors and will obtain written approval from the FTA. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 47 | <p><u>Time and Materials Contracts</u> - FTA C 4220.1F indicates that TM Contracts should be used only • After a determination that no other type of contract is suitable and • If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk. Of the 2 procurements reviewed for this requirement, 1 was found to be not deficient and 1 was found to be deficient. In the contract for professional schedule analysis services, no discussion of why T&M was the most appropriate contract vehicle was provided.</p> | 1 | <p>MWAA must respond with detailed procedures, training, oversight and follow-up audit results evidencing compliance within thirty (30) days from the date of the final report.</p> | <p>Contracting Officers and COTRs will provide documentation of analysis of the need to use Time and Materials for any Federally funded Rail project procurement. Time and Materials contracts will be minimized and used only when no other option is available. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual.</p> | COs and COTRs | <p>Concur. Con. Manual reference to follow.</p> | yes | 27-May | yes | 27-May |
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| 48 | <p><u>Cost Plus Percentage of Cost</u> - Of the 35 procurements reviewed for this requirement, 33 were found to be not deficient and 2 were found to be deficient. In the CA Supplement, the d-b contractor is provided on the basis of a fee for all tasks associated with utility relo. No fixed fee has been established. In a contract for pmss, no fixed fee was established & the contractor receives an additional fee for every hour charged. This incentivizes the expenditure of costs and labor to receive an open-ended amount of fee.</p> | 2 | <p>MWAA should complete an analysis of each scope change in the Comp Agreement Sup and the Jacobs/Carter-Burgess pms contract, reflect why each change was within scope, describe why the change was an additive change, indicate how the fixed fee should have been adjusted, & define the current & planned value of the entire effort broken out by total estimated costs and fixed fee. This information should be provided to FTA within thirty (30) from the date of the final report. MWAA also must revise the Comp Agreement Sup and the Jacobs/Carter-Burgess pmss contract to establish overall contract values to include total est costs & fixed fee amounts. The process to establish final overhead rates for the Comp Agreement Sup must be completed as part of this corrective action & within ninety (90) days of the end of the each calendar year. MWAA must modify its policies and procedures in conformance with FTA C 4220.1F, conduct proct staff training, & submit follow-up audit results evidencing compliance</p> | <p>Contracting Officers and COTRs will modify these two contracts to be in compliance by establishing fixed fees. This requirement will be addressed in a new Rail Procurement chapter to the MWAA Contracting Manual. Future rail procurements will include no CPPC pricing.</p> | COs and COTRs | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
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| | | | within thirty (30) days from the date of the final report. | | | | | | | |
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| 50 | <u>Piggybacking</u> - FTA C 4220.1F defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services. Grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause & that the terms & conditions of that contract meet the FTA requirements. One procurement was reviewed for this requirement and found to be deficient. In the purchase of SUV vehicles from a state contract, FTA clauses were omitted from the agreement. | 1 | MWAA must respond with documentation relating to the pre-award and post-award requirements of Buy America for this procurement, revise procedures, conduct training, implement oversight and furnish follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. | The Contracting Officer will provide the award file required documentation for the SUV purchase. The Authority include all federal requirements in any procurement made from an intergovernmental contract. This issue will be addressed will in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
| 52 | <u>Serial Price Negotiations [A&E]</u> - One (1) procurement was reviewed for this requirement. It was found to be deficient. In a contract for program management services, no documentation of serial price negotiations was provided. | 1 | MWAA must modify its policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and submit follow-up audit results evidencing compliance within thirty (30) days from the date of the final report. In addition, a summary of how labor rates and contract values were established must be provided. | Documentation of Pricing for the rail program management support services will be provided in the award file. | Proc. and COTR | 5/6/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |

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| 56 | <u>Clauses</u> - Of the 39 procurements reviewed for this requirement, 4 were found to be not deficient and 35 were found to be deficient. MWAA is using purchase order terms & conditions without adding the necessary FTA clauses when contracting with FTA funds. The design-build contracts, the CA Supplement, and a utility relocation contract were the only contracts that included the required clauses | 35 | MWAA must revise policies and procedures in conformance with FTA C 4220.1F, conduct procurement staff training, and verify compliance with updated requirements within thirty (30) days from the date of the final report. | The Contracting Officers will modify all Federally funded Rail project contracts to incorporate the federal clauses. This requirement and sample form will be included in a new Rail Procurement chapter to the MWAA Contracting Manual. | Proc. | 5/27/2011 Con. Manual reference to follow. | yes | 27-May | yes | 27-May |
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